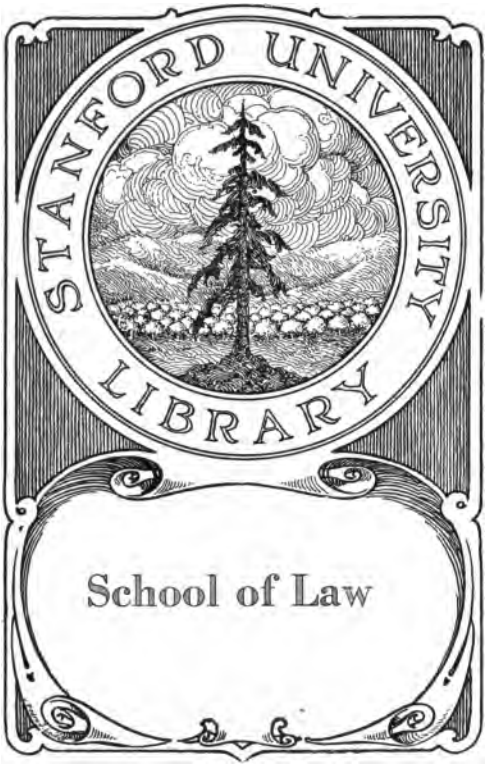

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The *Law Journal*, as announced last month, will be continued quarterly from the 1st of January, 1868, in the same manner, and at the same rate of subscription, ($2 per annum), as when first established. While the limits now imposed upon us will make brevity imperative, we shall, nevertheless, endeavor by rigorous condensation, to embrace everything of material interest.

RICHELIEU AND JOLIETTE DISTRICTS.

By proclamation, dated 28th December, 1867, the Court terms in these districts are fixed as follows:—District of Richelieu: two terms of Court of Queen's Bench at Sorel, beginning 1st May, and 8th November; three terms of Superior Court, each of seven days, to be held at Sorel from 13th to 19th January and May, and 3rd to 9th October; three terms of Circuit Court at Sorel, each of six days, from 7th to 12th of January and May, and from 27th September to 2nd October; three terms of five days at Village of Berthier, from 20th to 24th January and May, and from 21st to 25th September; three terms of five days at St. François du Lac, from 24th to 28th February, from 1st to 5th of June, and from 4th to 8th November.

District of Joliette: two terms of Queen's Bench at town of Joliette, beginning 5th of July and 15th November; three of the Superior Court at Joliette, each of seven days, from 16th to 22nd February and October, and from 28th June to 4th July; three terms of Circuit Court at Joliette, each of six days, from 10th to 15th February and October, and from 22nd to 27th June; three terms of Circuit Court, of five days, at the Village of L'Assomption, from the 26th to 30th January, May and October; three terms of Circuit Court, of five days, at Ste. Julienne de Rawdon, from 1st to 5th February and November, and from 6th to 11th June.

APPOINTMENT.

The Hon. JOSEPH NOEL BOSSÉ, of the city of Quebec, Member of the Senate of Canada, and one of Her Majesty's Counsel learned in the law, to be a Puisne Judge of the Superior Court in and for the Province of Quebec, taking rank and precedence next after the Hon. Samuel Cornwallis Monk, (Gazetted, January 24th, 1868).

LORD KINGSDOWN.

The name of Lord KINGSDOWN, who died on the 7th of October last, in his 75th year, is familiar to the profession here as that of one of the most assiduous members of the Court of final resort. Thomas Pemberton was born in London on the 11th of February, 1793. He read for the bar in the chambers of his uncle, Mr. Cooke, a distinguished equity lawyer. He was called to the bar in 1816, and rose rapidly into extensive practice. In 1829, he received a silk gown, and for many years stood at the head of the bar in his own Court, the Rolls. In January, 1843, the death of his aged and eccentric kinsman, Sir Robert Leigh, placed Mr. Pemberton in possession of a life interest in the Wigan estates, amounting to £17,000 a year. This income raised him to affluence; he retired from the bar, and shortly afterwards entered upon his judicial duties as a member of the Judicial Committee. These duties he performed entirely without emolument for twenty years, with unremitting diligence. In 1858, upon the formation of Lord Derby's Administration, the Great Seal was offered to him, but he refused it. It was in this year that he was raised to the Peerage. The *Times*, in an obituary notice (from which the foregoing facts are gleaned) speaks of the deceased nobleman in these terms: "Although he never filled any prominent office in the State; although he retired from the bar a quarter of a century ago, and has since devoted his great judicial talents and legal experience almost exclusively to the tribunal which does not often challenge public attention; although his whole life has

been singularly retired and uneventful, for he was a man alike devoid of vanity and of ambition; yet those who knew the strength and purity of his unobtrusive career, place him, without hesitation, in the very highest rank of English lawyers; and even to the public his name, associated with some of the most enlightened and important judgments of modern times, carried a degree of weight not always attached to names of higher official authority. The predominant quality of Lord Kingsdown's character was a fastidious refinement, which removed him altogether from the common pursuits of fame and power. "No breath of popularity," as he once expressed it, "ever touched his sail." But, if he was sensitive to the shortcomings and imperfections of others, he was not less exacting in all that concerned himself. Nothing satisfied him in his own productions short of the highest perfection which he was able to attain. Many of his judgments were written several times over; all were revised with elaborate minuteness. In 1858, when the Great Seal was offered him, he had already quitted the Court of Chancery for 15 years, and, strange as it may seem, we suspect that the reason which mainly determined his refusal was a distrust of his ability to perform the duties of the Chancellor, after so long an interval, in a manner entirely adequate to his conception of their importance. Perhaps it is fortunate for the world that not all men are equally scrupulous or conscientious. Lord Kingsdown's qualities as a judge were held by those who sat with him in the administration of justice to be literally unrivalled. The mind he brought to bear on the questions before him was deep, clear, and unruffled; his patience was inexhaustible; his sense of justice and of right even more acute than his love of legal precision and accuracy. He searched and brought out the juridical principle of which the law itself is but the form and expression; and he aimed at framing the decisions of the Court on large grounds of analogy and reason. The wide jurisdiction of the Privy Council was favourable to the application of these principles. The appellate jurisdiction of the Crown over the colonial courts of either hemisphere is now almost the sole link which holds together the British Empire. We have abandoned colonial legislation, we grudge military defence, but the Privy Council is still regarded throughout the colonies as the supreme expositor of the laws of the Empire. That moral influence of a British tribunal is still unshaken; and its authority has in our times been largely augmented by the wisdom, temper, and equity which Lord Kingsdown gave to it." The death of Lord Kingsdown reduces the number of Law Lords to nine, but of these, Lords Brougham, St Leonards, and Wensleydale are precluded by age from discharging their judicial functions The highest Court of Appeal consists, in fact, of six or eight working members, though nominally numbering about thirty.

RIGHT HON. FRANCIS BLACKBURNE.

The late Lord Chancellor of Ireland was born in 1782, called to the bar in 1805, and became King's Counsel in 1822. After having twice held the office of Attorney-General, he was appointed Master of the Rolls in 1842, and Chief-Justice of the Queen's Bench in 1846. In 1852, he was made Lord Chancellor, an office which he held only a few months, in consequence of Lord Derby leaving office. In 1856, he was appointed by Lord Palmerston Lord Justice of Appeal, but again became Lord Chancellor when the present Government assumed office. Failing health compelled him to resign a few months previous to his death, which occurred on the 17th of September, 1867.

THE TRIBUNALS AND THE ADMINISTRATION OF JUSTICE IN THE EMPIRE OF FRANCE.

We have already given the greater portion of the Hon. I. F. Redfield's observations on the Administration of Justice in England. The following, under date Paris, July 20th, is the result of his observations in France.

"One can hardly compare the Courts in

different countries, without the hazard of making unjust or unfounded inferences. And still there is no one thing upon which the real character of free Governments, and indeed of all Governments, more entirely depends. But there is very much in the mere organization of the Courts or judicial tribunals of the French Empire, to indicate the energy and decision with which the government is administered. It is a perfect system of superiority and subordination, from the humblest police magistrate to the High Court of Cassation.

In a few days' visit to the Palace of Justice, although accompanied by a very intelligent advocate, who was entirely competent and very ready to explain all which came under review, one could scarcely expect to acquire very accurate information in regard to the detail of so complex a system as that of the judicial tribunals of a great empire like that of the French. But some of the more important points of difference between our own and the jurisprudence of the French, and the comparison which each bears to that of England, may be briefly noted.

The procedure in France, as in most of the continental countries, is according to the principles and practice of the Roman civil law. In the trial of civil actions of every grade no jury is allowed, the judge deciding everything according to his own sense of justice and propriety. And, as would naturally be expected where everything depends upon the arbitrary discretion of the judge, testimony of almost every grade of conclusiveness, or the contrary, is received, and it often happens that the case is finally made to turn upon very slight circumstances, and is really decided upon evidence, in itself of no great significance, and which, upon the more exact and refined rules of the English common law, would scarcely be considered competent. But this is a result not very different from that which often occurs in jury trials at common law, where causes are made to turn, quite as often, perhaps, upon the bias of the jury, religious or political, or the last words of able and eloquent counsel, or of the judge in summing up, as upon the testimony given in Court, and in that way, perhaps, more complete justice is effected.

The French jury, in the Criminal Courts, consists of twelve, but unanimity is not required, the voice of the majority being sufficient in ordinary cases, there being some few exceptional instances, where the concurrence of two-thirds is required to give a verdict. We sat for a short time in the same court-room where the attempted or would-be assassin of the Czar, Berezowski, had been tried a few hours before. The same jury and the same judges still continued the session; the judges in their scarlet robes, and the minister of justice, in the person of the prosecuting attorney, clad in the same garb, occupying a seat half-way between th bar and the bench. The presiding judge called upon the accused, sitting between two gendarmes, to plead, who stood up and stated briefly their plea, and whether they had or desired counsel. The judge then administered a long oath to the jury, which seemed to embrace a kind of charge as to their duty, and, at the close, called upon each member of the panel, by name, who gave his assent by raising the right hand. The representative of the minister of justice then proceeded with the trial, first examining the accused, giv ng him the full benefit of his own story, if that can fairly be regarded as any benefit, which may, we think, be considered as somewhat questionable.

There is in each *arrondissement* throughout the empire an Imperial tribunal to hear appeals from all the Courts of first instance in that *arrondissement*. Paris, with some few of the adjoining districts, constitutes one *arrondissement*, and has its Imperial Court for hearing appeals from all the Courts of first instance within that district or *arrondissement*. We listened to a brief argument in this Court from an advocate of great zeal and energy, who spoke in a very high key, and after reading some ten minutes from a manuscript, closed by an impassioned appeal to the Court, which seemed to be regarded by them as so much matter of course as to produce no interruption of conversation between the different members of the Court, which had very much the appearance of making light of the graphic flourishes of the argument, but which, we have no doubt, had no such appearance to the speaker. The tribunal, consisting of nine judges, or about

that number, had certainly very much in their looks to recommend them. They were more youthful and had more the appearance of brilliancy than any Court we had seen since leaving America. One would naturally suppose, from their looks only, that they possessed full competence, both of learning and ability, for the satisfactory discharge of their important and responsible functions, and that both their offices and their salary were placed beyond peradventure by the tenure under which they were held, and the stability of the administrative power.

The judges in France hold office during life, or until the age of seventy, in all the Courts; and until seventy-five in the High Court of Cassation. The distinction may be not without reason, since by such a provision, and by removing the most experienced of the judges of the subordinate tribunals into that high tribunal, as vacancies occurred, there would be constantly found in the Court of last resort a considerable proportion of judges of largest experience and most matured wisdom, with presumptively an equal, if not greater amount of learning than could be secured in any other mode. And by extending the term of holding office in that Court to seventy-five, the services of those judges who retained full strength to an exceptional period could be continued in the Court of Appeal.

It is certainly not a little wonderful that so large a proportion of the American States should prefer to have the office of the judges, from the highest to the lowest, dependent upon popular elections, at short intervals, when the experience of England and France, and of all governments, where there is any pretence of consulting the popular will in administrative functions, has shown most unquestionably that the rights of suitors and of those accused of crime, are most wisely consulted in making the judges as nearly independent of all popular or administrative influence as is practicable. This is not a question which we propose to discuss here. But we cannot forbear to express our matured and settled convictions that the American people are acting under wrong impressions in the conclusion which seems everywhere to prevail, that judges are more reliable when dependent upon popular impulses, or, in other words, when not above being affected by the prevailing popular sentiment. There is no possible instrument more susceptible of easy and unjust perversion by bad men, or which bad men more often use for the accomplishment of their own base purposes, than a suddenly excited and superficial popular impulse. And there is, of course, nothing through which a timid or time-serving judge would be more readily reached, or which would be more naturally resorted to for that purpose. The history of all judicial murders, and it is a dark page, and one by no means restricted to narrow limits—is marked at every step by the most awful extremes of popular frenzy. Neither Charles I., nor Louis XVI., were among the most arbitrary or tyrannical of the English or French Sovereigns. And there can be no fair question in the mind of any sound lawyer and loyal man that both these men were really the victims of rebellion and treason, and that those men who carried them to the scaffold would, in a change of relations, have been guilty of the very same offences which they affected to punish, in greater measure. That, indeed, was abundantly proved in the subsequent history of the two Governments. And still those acts had the most unquestionable sanction of present popular sentiment. And it is equally true that the monarch whom the English people, in the short period of half a generation, recalled to the throne with shouts of acclamation, was in no sense the equal, either in ability or virtue, of his unhappy father, who, by the verdict of the same popular sentiment, justly suffered the penalty of death for imputed crimes of which he is now, by the united voice of the nation, regarded as not guilty, and of which his idolized son was and is considered to be guilty in intent, certainly, if not, in all cases, in act. But it is, perhaps, the most conclusive argument in favor of the independence of the judiciary and of its superiority over all popular and political influences, that these calamitous consequences of popular frenzy, to which we have just alluded, both in England and France, have been the primary and efficient cause of establishing their judicial tribunals upon the high vantage-ground of absolute and unquestionable independence. And it seems wonderful that so unequivocal a testimony of

historical experience should not be more heeded by others.

There is one marked distinction between the jurisprudence of the English common and chancery law, and that the continental countries, based upon the Roman civil law, in regard to which there seems great difference of opinion. In the English Courts, and equally in the American, there is always supposed to be some precise technical rule by which the competency of each particular portion of the evidence is to be measured, and by which it must be rejected if found incompetent; and its effect in the case is supposed to become thereby entirely removed. We know that in practice this is not always possible to be done, and that causes will thus, sometimes, be determined upon the bias of mind unconsciously produced by the knowledge or the belief of the existence of incompetent evidence. But in the continental countries almost everything offered is received by the judge. And in the trial of matters of fact before the common law Courts in England and America, a somewhat similar rule prevails, on the assumption that the Court will be able to eliminate the portion of evidence which is competent, and only give effect to that in determining the case. And in the trial of cases in equity, a somewhat similar course of practice prevails, in allowing all fixed and immoveable exceptions to the competency of evidence to be reserved, and passed upon at the final hearing of the cause. But in France, we found on consulting with the most eminent members of the bar, there existed a very general impression that their Courts were enabled to do more perfect justice, in the particular cause, by disregarding all mere technical exceptions to the evidence, and giving every species of proof just such weight as its impression might be in the mind of the judge. It is asserted there, that the judge is never obliged to say, as is sometimes done in England and America, that although he has not the slightest doubt of the entire soundness of the claim or defence, it cannot be allowed, by reason of some formal defect.

There is another peculiarity in the administration of justice in France, which seems very singular to those who have not seen its practical operation. It grows out of having a separate department of justice in the cabinet, and a distinct minister of justice, who takes cognizance, not only of the administration of criminal law, but who, to a certain extent, assumes the supervision of the civil department of judicial administration, by having some subordinate agent or minister always present in all the higher courts to listen to the trials, and whenever he deems it of sufficient importance, to give his own views to the court in regard to the proper determination of the cause. Upon our first entering the Court of Cassation, the minister of justice, standing within the enclosure appropriated to the judges, was reading from an extended manuscript a formal and elaborate commentary upon a cause, the argument of which had been closed the day before, or perhaps, a few days before. It gave one, whose views of judicial administration were derived from courts constituted like the English or American, the idea of subjecting the Courts too much to cabinet or Governmental influence. It seemed very much like converting the court into a jury, and requiring them to listen to the comments of a superior. We have no means of forming any judgment upon the effect of any such course of trial, but we should expect that it would be likely to be of considerable weight in the determination of causes, if it were so managed as to beget respect, which would certainly be desirable and likely to occur in the administration of a government, so prudent and popular as that of the present Emperor of the French. An able and learned minister, in such a position, could scarcely fail to acquire great control over the decision of causes, and it would enable the ministry to exercise almost irresistible power in the determination of causes of international importance. We found the leading advocates of the French bar seemed to feel the importance of having causes of any considerable public interest, which came before the Court of Cassation, favorably introduced to the minister of justice, and, if convenient, by some advocate in the interest of the administration, or who was supposed to have its confidence. The working of this plan, which has existed for a very long period in some European countries,

has not been specially objected to by suitors, or by any one, so far as we know.

It is impossible not to admire much which exists in the Governmental administration in France. It is, unquestionably, an able and benign Government, and one which gives great satisfaction to the people. It is wonderful how little of aristocratic effect or pretension meets the eye of the traveller in Paris, and most of that character which one does find here, has more the appearance of a temporary importation than of being entirely indigenous.

There is, too, in the municipal administration of the large towns of the French Empire, a very surprising energy and zeal for improvement. The entire city of Paris, extending over many miles, is being pervaded by the opening of great thoroughfares with continuous lines of trees upon each side, and flanked by extended blocks of the most substantial and beautiful stone buildings, thus giving the entire city almost the appearance of a newly built town, with an air of great cleanliness and neatness. This, doubtless, has some disadvantages in constantly removing the evidences of date. All this is done by the municipality of the district. The proprietors of the land and buildings are required either to build, in conformity with the plan furnished by the public authority, or else to sell at reasonable prices. If the proprietors, whether owners or lessees, elect not to build, and demand such prices, either for value or indemnity, as are deemed exorbitant, experts are selected, and all questions of indemnity or compensation are referred to them—and it is said that, practically, no cases of dissatisfaction occur. It seems to be the chief study of the French Government, in every department, to give satisfaction to the people affected by its acts, and in doing so, to consult the future as well as the present, and to act upon the assumption, that the subjects of the empire will be controlled by considerations of reason and propriety, rather than by caprice.

There may be much in the genius of the people to favor the result, but it cannot fail to strike all beholders alike, that in all departments of Governmental administration, as well in the judicial as in the legislative tribunals, and equally in the multiplied ramifications of the executive bureaus, everywhere and at all times, the one great occasion for wonder and admiration is, how it should happen that every one, almost without exception, is made to feel so completely satisfied with all that befalls him, and equally with all that is inflicted upon him. It must be admitted that this is a great desideratum in government, and especially in the judicial administration. We have always regarded it as of scarcely less importance in the determination of causes, whether civil or criminal, that the parties immediately affected by them should feel their justice and propriety, and necessity even, than that they should be absolutely so decided. We know very well that a desire to render a judgment acceptable to the parties to be affected by it, may be carried to such an extent as to become a vice, or a weakness, and thereby most effectually defeat its object. But within reasonable limits, and when pursued by dignified and honorable means, the effort and desire to render governmental administration acceptable to those who are to be affected by it is certainly to be commended."

NATURALIZED AMERICAN CITIZENS.

A point of considerable interest arose at the trial of the Fenian Colonel WARREN. Being charged as a Fenian conspirator he produced his naturalization record as a citizen of the United States, and claimed the right of an alien, under the law of Edward III, to have a jury *de medietate linguæ*. Lord Chief Baron PIGOTT denied the application of the law to the case of WARREN, on the ground that no subject of Great Britain can alienate his allegiance.

This question, affecting the rights of millions of foreigners who have become naturalized in the United States, is, obviously, of considerable importance, and several American journals have urged, with some heat, that naturalized citizens should enjoy the same privileges as natives. It appears, however, that the question is far from being settled. In fact, Chief Baron PIGOTT cited from several American authorities, opinions which seemed to show that the American doctrine is not at variance with that of Great Britain. Thus, Judge STORY says: "There

is no authority which has decided, affirmatively, in respect to the right of expatriation, and there is a very strong current of reasoning opposed to it, independent of the known practices and claims of modern nations of Europe." Chancellor KENT says that the question has never been settled by judicial decision. Speaking of Americans, he adds: "The better opinion would seem to be that a citizen cannot renounce his allegiance without permission of the United States to be declared by law." On the other hand, the Supreme Court of the United States decided in 1827: "In the United States expatriation is considered a fundamental right. The doctrine of perpetual allegiance grew out of the feudal system, and became inoperative when the obligations ceased upon which that system was founded." And WOOLSEY, in his treatise upon International Law, says: "There is no doubt that a State, having undertaken to adopt a stranger, is bound to protect him like any other citizen. The nation which has naturalized him, and has thus bound itself to protect him, cannot abandon its pledges on account of the views of civil obligation which another nation may entertain." *Harper's Weekly*, one of the most moderate and dispassionate of American journals, referring to the case, adds: "Yet as matter of fact, the Government of the United States has always acknowledged that it would not defend a naturalized citizen against the claims of another Government for duties actually due before naturalization. Even Mr. CASS admits a certain claim. He wrote in 1859 to our Minister in Prussia: 'I confine the foreign jurisdiction in regard to our naturalized citizens, to the case of actual desertion, or of refusal to enter the army after having been regularly drafted and called into it by the Government.' Mr. WHEATON, Mr. WEBSTER, and Mr. EVERETT, did not claim as much as Mr. CASS. They held that if a country does not acknowledge the right of a native to renounce his allegiance, it may enforce its claims if he is found within its jurisdiction."

The demand of the Fenian leader for a mixed jury was, we think, one that could not and should not be granted; but it is obvious that in some instances, the rigor of the rule as to allegiance being inalienable must be mitigated. Thus in the war of 1812, it was found impossible for Great Britain to punish as traitors those of her subjects bearing arms against her, who had become naturalized in the United States.

The following account (from the *London Solicitors' Journal*), contains some hints as to the privileges of counsel which may be of interest.

"In the course of the trial of John Warren, one of the prisoners charged with high treason before the special Commission now sitting in Dublin, a point of some interest arose. The prisoner appears to be a natural-born subject, who has become naturalized in the United States, and under these circumstances he claimed, as an alien, to be tried by a jury *de medietate linguæ*. This was opposed by the Attorney-General and refused by the Court. Thereupon the prisoner, having been formally given in charge to the jury, said--

"As a citizen of the United States I protest against being arraigned, or tried, or adjudged by any British subject."

The Chief Baron—"We cannot hear any statement from you when you are represented by counsel."

The Prisoner—"Just a few words, my Lord."

The Chief Baron—"We cannot hear you. Your counsel is heard on your part. You pleaded 'Not Guilty,' and our course is now to proceed with the trial on that plea. We cannot hear any statement now from you when you are represented by counsel."

The Prisoner—"Then I instruct my counsel to withdraw from the case, and I now place it in the hands of the United States, which has now become the principal."

The prisoner's counsel then left the court, whereupon Mr. Adair said he was instructed by the Government of the United States of America to appear on behalf of six prisoners, to watch the proceedings and to report the manner in which the trial was conducted.

Mr. Justice Keogh—"Are you counsel for the prisoner at the bar?"

Mr. Adair—"I have been instructed by the Consul for the United States to watch the proceedings so far as certain cases are concerned, and when counsel withdrew from this he thought it right that I should interest myself on behalf of the prisoner. I want to know how far it is my privilege, as counsel, to act in this matter, and what course I should be justified in taking. I have no wish to interfere improperly in the case, but simply to do my duty."

The Lord Chief Baron—"If you are not acting as counsel for the prisoner we cannot allow you to interfere."

Mr. Justice Keogh—"If, on consideration, the prisoner thinks proper to dispense with the assistance of the other counsel, and to accept you, he is at liberty to do so."

Mr. Adair—"I have not been instructed by the prisoner."

Mr. Justice Keogh—"Then your interference is irregular and unprofessional."

Mr. Adair said he did not wish to interfere; he had simply addressed the court in the discharge of his duty. During the whole of his professional experience he had never volunteered in a case, and he thought the observation from the bench uncalled for and unnecessary.

While we heartily concur in the rule which excludes voluntary services on the part of counsel as a most necessary protection to the court as well as the profession, we cannot but think that Mr. Adair was placed in a position of some difficulty, such as fully warranted him in asking the direction of the court; and although Mr. Justice Keogh was probably right in holding that he could not interfere, the United States' consul not being a party to the proceedings, the manner in which he did so appears to us most uncalled for and reprehensible. Mr. Adair was instructed by the Government of the United States to watch the interests of its citizens; the prisoner pointedly threw the responsibility of his defense on that Government, and it does not seem to us that their consul could well have helped interfering to the extent he did—viz., to put the court in possession of the facts, and ask for their guidance."

PRIVY COUNCIL.

JAMES MACDONALD, APPELLANT; and JAMES LAMBE, RESPONDENT; and MARY NICKLE ET AL., RESPONDENTS.

Action to recover land, part of a Seigneurie.—Adverse Possession—Prescription.

Action by *Seigneur* to recover possession of a piece of ungranted land forming part of his *Seigneurie*, against a party claiming under an informal deed from one who had no title deed, but who, with the defendant, had been in undisturbed possession for thirty years.

Held (affirming the judgment of the Court of Queen's Bench for Lower Canada), that a plea of prescription of thirty years' possession was a bar to the action, as: first, that it made no difference that during the time of such adverse possession the Seigneur had, under the Statute, 6 Geo. 4, c. 59, for the extinction of feudal and seigniorial rights in the Province of Lower Canada, surrendered the Seigneurie to the Crown for the purpose of commuting the tenure into free and common socage, the issuing of the Letters Patent re-granting the same being *uno flatu* with the surrender to the Crown; and that, both by the ancient French law in force in Lower Canada, as by the English law, prescription ran in favour of a party in actual possession for thirty years; and, secondly, that such adverse possession enured in favour of a party deriving title to the land through his predecessor in possession.

Held, further, that such junction of possession did not require a title, in itself *translatif de propriété*, from one possessor to the other; but that any kind of informal writing, *sous seing privé*, supported by verbal evidence, was sufficient to establish the transfer.

The appeals in these cases were from the decisions of the Court of Queen's Bench in Lower Canada, in two petitory actions brought by the Appellant against the Respondent to recover possession of certain lots of land in the district of Montreal. The facts and pleadings were the same in both cases.

The declaration alleged that, on the 20th October, 1832, the Hon. E. Ellice was, and for more than 20 years had been, in possession of the ungranted lands of the Seig-

neurie of Beauharnois, including the land claimed in the action; that on that date he surrendered them to the Crown, and that the Crown, by Letters Patent, re-granted them to him in free and common socage. The declaration then alleged a title in the plaintiff to the land in question, derived from Ellice, and averred that the defendant, about the year 1850, had taken possession of the land, and ever since kept it from the plaintiff; and prayed that the plaintiff be declared owner, and the defendant adjudged to deliver up the land, and repay the rent and profits he had received.

The case was dismissed by *Smith*, J., in the Superior Court, and this judgment was affirmed by the Court of Appeals, on the ground that the defendant had proved prescription.

The argument of counsel before the Judicial Committee is noteworthy, from the fact of its raising an old question. The following is an extract: "But an important question arises with respect to the governing law of prescription to be applied. We contend that the Court below miscarried in applying the ancient French law to the case. The law that governs it is the English law. The Proclamation made on the cession of Canada, in the year 1763, introduced the English law by right of conquest. It is true the effect of the Proclamation, as to the full extent of the introduction of that law, has been doubted, as it does not mention in express words "English law." The Statute, 14 Geo. 4, c. 83, however, by implication, makes the Proclamation to this extent apply to English law, even if it had not been so before. The Statute, 6 Geo. 4, c. 59, was passed to remove doubts as to certain matters, but section 8 does not abrogate the English law, being the governing law." The counsel for the Respondent answered: "No serious doubt can be entertained that the law to govern the case is the old French law prevailing in Lower Canada. Such a point was never before taken in the numerous appeals to this Tribunal from Lower Canada, where the rights of the parties have always been regulated by the old French law."

Lord Cairns:—The actions in which these appeals are brought were petitory actions to recover possession of two pieces of ground in the 5th range of Russeltown, in the Seigniory of Beauharnois. It was admitted in the argument before us on behalf of the Respondent, that the land in question formed a part of the Seigneurie of Beauharnois, as originally granted in 1729 by the French King, Louis XIV. The judgment delivered in the primary Court in Lower Canada by Mr. Justice Smith in favour of the Respondents proceeds upon the principle that the Respondent and Goodwin, his predecessor, had been in possession of this land from 1807, and that this possession must be taken to have been by permission of the Seigneur, and that, therefore, the Seigneur could not eject the Respondent, but only claim from him rights and dues such as a tenant should render to his Seigneur. This view of the case was again pressed in argument upon these appeals, but their Lordships are of opinion that, although there may be some facts appearing in the evidence which would form a ground for such an argument, the pleadings between the parties render the argument inadmissible. The Appellants in both the appeals allege in their declaration that the Respondent wrongfully, and without any title, took and obtained possession of the land, and has kept illegal possession of it, and pray delivery of it. The Respondent, on the other hand, alleges a seisin of the lands in 1807 by Goodwin, a transfer in 1833 from Goodwin to the Respondent, and that the land has been peaceably, openly, and uninterruptedly possessed and enjoyed by Goodwin and the Respondent, *animo domini*, from 1807 to the present date, and that the Respondent has a right to be declared proprietor and owner of the land. Their Lordships are of opinion, with the Court of Queen's Bench of Lower Canada, that the case is thus put on both sides as one of adverse possession, and that what the Respondent has undertaken to prove is not a tenure, express or implied, under the Seigneur, but a title by prescription,

for thirty years and upwards, against the Seigneur. The first question, therefore, is one of fact: in whom has the possession of the land been for thirty years prior to 1855? If possession has been *de facto* in Goodwin and the Respondent, that possession is admitted to be an adverse possession. It appears that one Levy Petty was in possession of the lot in 1807, in which year Goodwin took possession of it; that a house was built upon it in Petty's time, which Goodwin at first occupied, but afterwards built a house for himself; that there was a pretty large clearing when Goodwin came; that Goodwin laboured and cropped the land, and was a married man living with his family; that Goodwin paid the bridge-tax for the lot, and that the whole of the lot was known as the Goodwin Lot. The possession of the whole by the Respondent from 1833 is still more clearly proved, and was, in fact, little, if at all, disputed. There is, however, a piece of evidence coming from the Seigneur himself, or his agents, which their Lordships look upon as still more conclusive of the fact of possession. It appears that in the year 1828 steps were taken, upon the death of Mr. George Ellice, the former Seigneur, to require from the persons then holding the lands an exhibition of the titles under which they held. A list is given of the persons then found in possession of the lots in Russeltown on whom circular notices from the agents of the Seigneur were served, and the name of David Goodwin is there entered as the person in possession of lot 16 of the third section; service being stated to have been made by delivery of the circular to his wife, and speaking to himself afterwards. His possession is treated as a possession of the whole lot, for a distinction is made in other cases where a lot is possessed in halves by different persons; and the proceedings in 1828 are upon the footing of the persons mentioned in the list having been in possession for some time. The result of these proceedings is, for this purpose, immaterial; but what has been stated is evidence of the most satisfactory description that the agents of the Seigneur, in the year 1828, found Goodwin in possession of the whole lot, and this evidence, coupled with the testimony in the case, establishes, to the entire satisfaction of their Lordships, a possession by Goodwin and the Respondent of the whole lot for upwards of thirty years.

The other questions in the case are questions of law. Goodwin gave up possession to the Respondent in 1833; but it was contended that the document by which he made over his title was insufficient to connect the possession of Goodwin with that of the Respondent. First, because it was a document *sous seing privé*, and, therefore, without date as regards third parties; and, secondly, because it was not an instrument amounting to a conveyance and *translatif de propriété*.* Both these objections were overruled by the Court of Queen's Bench, and, as their Lordships think, rightly: The first of the objections, viz., that the document is *sous seing privé*, was little argued by the Appellant; and their Lordships do not think it necessary to add anything to the reasons for disallowing it given by Mr. Justice Meredith. As to the objection that the paper is not a conveyance *translatif de propriété*, it would, their Lordships think, be somewhat remarkable if, where the real object is to show that an incoming occupier claims under and by way of direct continuation of the occupation of an outgoer, and where at the time there is no real title to be conveyed, an instrument adapted to pass a real title should be required. Their Lordships think, however, as did the Court below, that there is no foundation for this objection in any of the authorities which have been cited. The authorities speak of a predecessor and successor, of the successor claiming by contract or by will, and of a legitimate continuation of possession; and they are careful to negative as a suffi-

* The document was in these terms: "Russeltown, Sept. 21st, 1833. This may certifey that I do this day sell, convay, and give up all right, title, and clame that I have, or ever had, to the lot of land I know receide on to James Lamb, being lot No. seveneteneth in the third section. David Goodwin. James Richardson, Patrick Mahon, Witeness."

cient connection the mere fact that one possession has immediately preceded the other, and they do no more than this. There is in the present case ample proof from the paper, and from the parol testimony, of a *bona fide* sale from Goodwin to the Respondent, and of possession taken and continued under that sale; and this, in their Lordships' opinion, is sufficient.

The Appellants contended, however, that inasmuch as under the Statute, 6 Geo. 4, c. 59, Mr. Edward Ellice, the Seigneur, had, by the surrender of the 20th of October, 1832, vested the Seigneurie, and the ungranted lands thereof, including, as was said, those now in question, in the Crown, to be re-granted in common socage, there was an interruption in the prescription, since no prescription would run against the Crown. Their Lordships do not think it necessary to consider how far, under any circumstances, this argument could be maintained, inasmuch as in the present case they find that no acceptance of the surrender by the Crown was made until the grant of the 10th of May, 1833, so that the land was surrendered and re-granted *uno flatu*, and merely as a mode of converting the tenure, and there never was any possession or ownership of the land by the Crown.

Their Lordships have assumed, as was ultimately conceded by the counsel for the Appellant, that the case falls to be decided, so far as any question of law is concerned, by French law. But if principles of English law were to be applied, the prescriptive title of the Respondent would not, in their Lordships' opinion, be less strong. Their Lordships will humbly advise Her Majesty that both these appeals should be dismissed with costs.

RENAUD *v.* TOURANGEAU.

It is with much pleasure that we learn the decision on the appeal to the Privy Council in this suit, confirming the judgment of Mr. Justice TASCHEREAU, and also in accord with the opinions of Chief Justice DUVAL, and Chief Justice MEREDITH. The case may be found reported at length 7 Jurist 238. The history of the case may be summed up as follows:—

The Appeal to the Privy Council was instituted by J. B. Renaud, from two judgments rendered in the Court of Queen's Bench, Quebec, one on the 16th of March, 1863, and the other on the 17th of March, 1865, in favour of Joseph Guillet dit Tourangeau, against whom previous decisions had been given by Mr. Justice Taschereau in the Superior Court. The case turned upon the validity of a clause in the will of Tourangeau's father, whereby the testator directed that Tourangeau should not in any manner, encumber, affect, mortgage, exchange, or otherwise alienate the immoveable property given to him, by the will, until after *twenty years* from the death of the testator. The property, however, became mortgaged by him to Renaud within the twenty years, and upon being taken in execution, at the suit of Renaud, for the satisfaction of this mortgage, Tourangeau, by opposition, pleaded the nullity of the seizure, and the exemption of the property from the payment of debts within the period above mentioned. Mr. Justice Taschereau gave judgment on the 5th May, 1862, dismissing the opposition of Tourangeau on the ground that the clause in the testator's will, prohibiting the alienation, was void under the law of the country, holding that the property so seized should be sold to satisfy the mortgage. From this judgment Tourangeau appealed to the Court of Queen's Bench, which Court, on the 16th March, 1863, reversed the decision of Mr. Justice Taschereau, maintaining that the clause in the will, prohibiting the alienation by way of mortgage, was valid. This judgment was rendered by a bare majority of the Court, consisting of Mr. Justice Aylwin, Mr. Justice Mondelet, and Mr. Justice Berthelot, the two latter acting as Assistant Judges of the Court. Mr. Justice Duval and Mr. Justice Meredith dissented from the decision, being of the same opinion as Mr. Justice Taschereau. The record was accordingly transmitted to the Superior Court for further proceedings on the opposition of Tour-

angeau, the question in appeal having been determined on a mere question of law; and in such a form as not to admit of an appeal to the Privy Council at that stage of the proceedings. In fact the Court of Appeals refused to allow it, on the ground that their judgment was interlocutory and not final. The point came again before Mr. Justice Taschereau, who, on the 15th of April, 1864, gave judgment for Renaud, on the same grounds as those expressed in his former judgment, stating that the judgment of the Court of Queen's Bench having been interlocutory, and an appeal to Her Majesty in Council having been refused on that ground, the judgment was not binding on him, and that he adhered to his former judgment. From this judgment Tourangeau again appealed, when the majority of the Court in Appeal were of the opinion that, although the judgment of the Court below, as to the invalidity of the restriction in the will, was well founded, the former judgment of the same Court was binding on the parties, subject only to revision by the Queen in Council. The Court was then composed of Chief Justice Duval, and Justices Aylwin, Meredith, Drummond, and Mondelet. The Chief Justice and Judge Meredith adhered to their original opinion, and Mr. Justice Drummond coincided with them as to the nullity of the clause in the will, but all three were of opinion that the previous judgment of their Court was final, and bound them to act in accordance with it, although contrary to their own individual opinions. The judgment on the point as rendered by Mr. Justice Taschereau was accordingly again reversed. On this reversal, Judge Aylwin and Judge Mondelet adhered to their previously expressed opinions, as to the clause in the will being valid, but the latter differed from the entire Court, as in his opinion the previous judgment in appeal was merely an interlocutory judgment, and the majority of the Court as composed of Chief Justice Duval, Meredith, and Drummond, could reverse it according to their opinions on the real merits of the clause in the will.

From the judgment of the Court of Queen's Bench, rendered on the 29th September, 1865, and from the interlocutory judgment of the 10th of March, 1863, an appeal was instituted by Renaud to the Privy Council, by which tribunal both judgments were reversed and the two judgments of Mr. Taschereau confirmed, with costs in favor of Mr. Renaud.

SUPERIOR COURT IN REVIEW.

Montreal, Nov. 28, 1867.

DOUGLASS *v.* WRIGHT, and BROWN, opposant.

Insolvency — Assignee — Insolvent Act of 1864.

Held, that an assignment made by an insolvent to an official assignee not appointed as such for the district or county in which the insolvent has his place of business, is null and void.

The question raised in this case was the validity of an assignment made by an insolvent doing business in Sorel, to an official assignee appointed for the district of Montreal.

MONK, J., dissenting, was of opinion that the assignment made in the present case by Wright, an insolvent, resident in Sorel, to Mr. T. S. Brown, an official assignee for the district of Montreal, was legal and valid.— By the Act of 1864, the bankrupt could only assign to an assignee resident within the district or county where the bankrupt had his domicile, but in the amended Act of 1865, this clause had been omitted, and his Honor believed, after careful consideration, that the insolvent might assign to the official assignee of another district. Further, there was nothing in the record to show that there was an official assignee in the district of Richelieu. Apart from this, assignments similar to the present had been made in many cases, and these assignments had been followed by deeds of composition, sanctioned by the Court.

MONDELET, J. The opposant is an official assignee appointed for the district of Montreal, under Sec. 4 of the Insolvent Act of 1864. The defendant is a resident of the District of Richelieu. The moveables of the defendant have been seized at the town

of Sorel, where he resides, in execution of a judgment obtained by plaintiff against him. The opposant, pretending that the defendant has made a legal cession of his estate to him as official assignee, opposes the *saisie et exeution* above mentioned. The Circuit Court of the District of Richelieu has dismissed the opposition on the principle, 1st. That Brown is not a *Syndic* or assignee for the District of Richelieu, but only for the District of Montreal. 2nd. That there is at the town of Sorel and there was at the time of said session, a *Syndic* or assignee. The judgment, of course, declares the cession to Brown null and of no effect. I entertain no doubt on this very plain point. By the Insolvent Act, the Board of Trade of any locality may appoint any number of assignees in the county or district wherein is situate such Board of Trade, *or* in the county or district adjacent, where there is no Board of Trade. Now Mr. Brown has been appointed for the District of Montreal and no more. If there be no Board of Trade in the District of Richelieu, the Board of Trade of the adjoining District can appoint an assignee or any number of assignees for the District of Richelieu. If such *syndic* or assignee does exist, of course the cession should have been made to him; if none has been appointed there, no such cession could take place. In either case, the cession to Brown is null and void. In vain is the 2nd section of Chap. 18, 29 Vict., the Amending Act of 1859, invoked: it merely enacts that a voluntary cession may be made to any assignee appointed *under the said Act of* 1864. If under the Act of 1864, the Board of Trade, or the Council thereof, could name assignees only for the County or District wherein it is situate, *or* for the adjacent County or District if therein there is no Board of Trade, it is plain that a cession to a *syndic* not specially named for the County or District where the insolvent resides, and in which the insolvent carries on his trade, is an utter nullity, and in this case very properly so declared by the Circuit Court of Richelieu, (*Loranger*, J.) Besides it is of record that there is no official assignee at Sorel. But, as above remarked, it matters not whether at Sorel there is or is not an official assignee. The sole question is as to whether Brown is or is not appointed for the District of Richelieu. He being an assignee only for the District of Montreal, he had no authority to receive the voluntary assignment of the defendant, though it has or may happen to have been made in the District of Montreal. If the contrary doctrine were maintained, it would open the door to innumerable frauds. An insolvent from Rimouski, or any distant part of the Province, might come up and make an assignment in Montreal, and thus out of sight of his creditors, carry on an operation unknown to them. And inasmuch as that assignee should and ought to be controlled by the Court within the jurisdiction of which is situate *le siége des opérations du failli*, it is easy to apprehend at once *que le failli aurait ses coudées franches.* Wherefore, on the law first, on the consequences, next, I frame my opinion, and conclude by saying that the judgment appealed from is strictly correct and should be confirmed.

BERTHELOT, J., concurred.

SUPERIOR COURT.

CORNELL *v.* THE LIVERPOOL AND LONDON INSURANCE COMPANY.

Montreal, June 10, 1867.

Insurance—Prescription.

MONK, J. This is an action on a policy of insurance to recover for loss by fire. There were two points relied on by the defendants; first, that the policy of insurance required a particular statement to be sent in. The Court might, perhaps, have got over this difficulty under the circumstances proved, but the second objection was that under the law it was absolutely necessary that the action should be brought within a year, and in this instance two or three years had elapsed. His Honor was at first under the impression that this prescription was one which the Court need not enforce, but after examining the authorities sent up, he felt satisfied that he was bound to enforce this prescription. The authorities were

almost unanimous, and he had no hesitation in saying that they were conclusive. This action must, therefore, be dismissed with costs.

A. & W. Robertson, for the Plaintiff.
F. Griffin, Q.C., for the Defendants.

SUPERIOR COURT.

Montreal, 5th October, 1867.

MORIN, FILS *v.* MEUNIER.

Settlement of Accounts—Disputed Credits.

MONK, J. It appeared that in 1865 Morin and Meunier entered into an arrangement, under which Morin was to purchase corn for Meunier, and was to receive a certain commission upon the amount of his purchases. He proceeded to purchase corn in virtue of this arrangement to the amount of $5,000 or $6,000. During the existence of this arrangement Meunier was in the habit of paying considerable sums to Morin in liquidation of the amount the latter had paid for the corn. The last of these payments by Meunier to Morin was on the 4th of November, 1865. Immediately after the contract had been executed, difficulties arose between the parties about their accounts. There was one peculiarity in this case that was worthy of notice. Morin sent in a statement of purchases made by him, and both parties agreed that this statement was entirely correct. Morin, although he might be an ignorant man, and not much versed in keeping accounts, nevertheless seemed to have kept his accounts in this matter with great care and exactitude. The difficulties that arose between the parties resulted from payments made by Meunier to Morin. It did not appear that Morin kept any particular account of these payments. It was true there were two statements filed as exhibits which purported to be an account of the payments made, but there was a motion to reject these papers, and this motion must be granted, because the Court did not think that they could be received as evidence. The Court had, therefore, to deal with the receipts given by Morin to Meunier. It appeared that Meunier had sued Morin for a balance due, in another jurisdiction, at Joliette, which action was connected with this affair, but the Court did not regard this as having any importance in connection with the present suit. With his declaration, Morin, the plaintiff, had filed a statement of the corn he purchased, and the defendant acquiesced in the correctness of this statement. The plaintiff also gave credit for certain sums received. There were two items, one of $180, and another of $600, which alone gave rise to any dispute. If the Court had it in its power to dispose of these two items, the case would be clear enough. Taking up first the item of $180, it would appear that this $180 was paid by Meunier's clerk to Morin. There was no dispute on this point, because there was his receipt for the sum. The receipts were all kept by Meunier in two small books, with the exception of the one for $180. The receipt for this sum was written in pencil in a small dirty book which had always belonged to Meunier and had been in his possession. In looking at this receipt, it was manifest to a practised observer that it was originally $200 or $300, and had been changed from that figure to $180. That was the amount paid by Meunier's clerk to Morin. There was no difficulty with regard to the fact that this sum of $180 had been paid. The whole pretension of Morin was that this $180 could not be charged, for this reason: On the the 10th of October Morin received $300, and it was contended by him that the $180 in question was included in the $300 paid at this time, and that the defendant sought to obtain credit for the same sum twice over. Dealing first with this $180, the Court had the receipt before it, and it had also before it another receipt given on the second day after for $300. It was the duty of the Court to say either that this sum of $180 must be included in the $300, or that it must stand alone. There is no principle of law more clearly acted upon than that receipts are by no means conclusive evidence. They do constitute *prima facie* evidence, but it is competent for the parties to prove that the money was not received. Morin had attempted to do this. There was evidence to the effect that Morin, after becoming aware that there was an overcharge of $180, on coming to Montreal, was again desirous of entering into business transactions

with Meunier, by selling him oats. They began to speak of this $180 which had been paid by the clerk, and although there was nothing definite in what was said by either of them, yet it was certain that Morin expressed his belief that this $180 was included in the $300. Meunier seemed struck by this, and appeared desirous of leaving it to the clerk. His Honour was of opinion that it must be assumed the matter was settled according to the pretension of Morin, and he thought there was suficient to justify him in saying that this $180 was in reality included in the receipt for $300. That point in the case was thus disposed of. Next, as to the receipt for $600; if it was possible for the Court to arrive at a just conclusion upon that point the case was disposed of. It was certain that on the 21st of September an amount of money was paid to Morin. The circumstances were briefly these: Morin was in want of money. He sent a man to Meunier at Montreal. This man said that when he arrived Mad. Meunier told him her husband was absent, and that she could only give him $50. When the messenger returned to Morin with the $50, the latter said he was sorry, as he wanted more. This corroborated the man's statement that he had only received $50, (instead of $100 as pretended,) as it was hardly probable that he would run the risk of abstracting $50 before handing it to Morin. His Honour was inclined to believe from the corroborative testimony that this man only received $50. The following day Morin came to Montreal from Repentigny for more money. Chaput, the clerk, stated that the money was brought out and counted, and put up in *rouleaux* of $10, and packages of $100, to the amount of $500. There was no one present but Morin, Meunier and Chaput. After the money was put up, Morin went in behind the counter to draw a receipt. Just then Meunier's wife came in and said, don't forget the $100 paid yesterday, which would make $600. Chaput went away after seeing Morin begin to write. He did not see him put up the packages, he did not see the money in his possession, but he was certain of all the facts just narrated. Now one theory was that Morin went inside to write a receipt for $500, and that when Madame Meunier came in, he struck his pen through the "5" and wrote "600." It was evident from a careful examination that this receipt was first 50 or 500. On the other hand it was a little remarkable that of all the receipts of Morin, this was the only one in which the amount was not mentioned in writing, but in figures only. His Honour had to bear in mind that there had been a very serious mistake in the first place respecting the $180, and that Meunier had attempted to charge this sum twice. He did not consider that this mutilated receipt was at all conclusive as evidence whereon to base a judgment of the Court. He must see whether it was sustained by the evidence of Chaput. Now, Chaput, besides the fact of his being in Meunier's employ, and of his being mixed up in the affair, had fallen into some contradictions. It also appeared that after his deposition had been begun, he left the *enquête* room, and went into the passage with Meunier. This was a gross impropriety in a witness. From this circumstance, and the fact of their being some peculiar evasions and contradictions in his testimony, the Court was not disposed to place implicit reliance in it. It would have been in Meunier's power to take Morin upon his oath, but he had not done so. The Court had refused to administer the judicial oath, as there appeared to have been a great deal of feeling exhibited in the case. Upon the whole, then, his Honour was inclined to think that there had been an error, he would not say there was fraud. With very great hesitation and difficulty, he had come to the conclusion that the plaintiff's case was made out, and that judgment must go for the amount claimed.

Piché, for the plaintiff.

Jetté & Archambault, for the defendant.

DONEGANI *v.* MOLINELLI, and E. *Contra.*

Statute of Frauds — Commencement of Proof — Tender.

MONK, J., said that this was a case which had given him a great deal of trouble, and it was one of those in which it was difficult for the Court to come to a decided opinion. A poor man named Molinelli came to Montreal and made the acquaintance of Donegani, who advanced him money from time to time in

small sums. Molinelli was a skilful mechanic, and made some repairs for him. In 1865, a provincial exhibition was to take place. At this time Molinelli was trying to work himself into notice in Montreal, and Donegani was co-operating with him. They conferred about the approaching exhibition, and Donegani suggested that it would be a good idea for Molinelli to exhibit a piece of furniture. Molinelli acquiesced in this proposal, and setting to work, made a sideboard nine feet high, an article of great beauty and perfection, but an unusual piece of furniture in size. Very few men would like to have such an extraordinary piece of furniture in their houses; but to have it in a small house like Donegani's would be insanity. Molinelli went on with his work, and Donegani came to inspect it from time to time, and also furnished the old velvet used in the making of it. The sideboard was exhibited, and subsequently taken back to his shop. Donegani now began to be pressing about the money he had advanced, whereupon Molinelli said, here is the sideboard I made for you, worth $700, which will more than pay you, you had better take it. This was in the early part of November, and on the 17th of November Molinelli protested Donegani, and his wife who was separated as to property. He sent a notary and said, this sideboard has been ready a long time; you had better take it. Donegani seemed to have been very much astonished at this, and on the 27th brought the present action for the moneys advanced. The plea was that the sideboard was made for the plaintiff, and was worth more than the plaintiff claimed. There was a good deal of difficulty about the evidence. The first question was a question of law. The defendant had no writing amounting to a *commencement de preuve par écrit.* It was contended that there was a commencement of proof in the answers of Donegani. His Honour had examined them carefully, but did not find anything. The defendant urged that it required very little to constitute a *commencement de preuve*—evasive answers, &c.; but Donegani's evidence did not in any part disclose sufficient to enable his Honour to say that there was a *commencement de preuve.* As to what constituted a commencement of proof, a good deal was left to the discretion of the Court, and would depend upon the circumstances of the case. This was a commercial case, and in these cases we were obliged to have recourse to the rules of evidence laid down by the laws of England. Now, under the English law and the Statute of Frauds, the plaintiff had argued that this evidence was not admissible. It was contended by the defendant that the order could be proved by parol evidence, but on referring to the 539th page of the Consol. Stat. L.C., it would be observed that the provisions of the English Act were extended in Lower Canada to contracts for goods to the value of $48 66⅔, and upwards, 'notwithstanding the goods are intended to be delivered at some future time, or are not at the time of such contract actually made, procured, or provided, or fit or ready for delivery, or some act is requisite for the making or completing thereof, or rendering the same fit for delivery." This act was based upon the jurisprudence in England, and the words of this clause clearly met the present case. The prohibition applied to the order as well as to the sale and delivery, and, therefore, it was not in the power of the defendant to produce parol evidence either of the order or the sale, or the delivery; therefore the motion to reject this evidence must be granted. But for the satisfaction of the defendant the Court might go further and examine this testimony. What did it amount to? In the first place his Honour had already adverted to the extreme improbability of any man ordering such a piece of furniture. It was possible that Mr. Donegani might be such a peculiar or extraordinary man as to order an expensive piece of furniture, and then say he did not order it; but unless he was mad he could not have ordered such a sideboard as this. It was too big to go into his room. Further, was it probable, if he had ordered this side-board, that it would have been taken from the exhibition back to the defendant's shop? It was very strange also that the defendant would allow such a length of time to elapse without calling upon the plaintiff to take it. There was another circumstance to be mentioned: On the 17th November, when the defendant tendered the sideboard to Mr. and Mrs. Donegani, it was

not in his possession, but was at the Jesuit's College. He had previously sold it to one Lamontagne. But it was said this was only a transfer by way of pledge to secure advances made to Molinelli who was to make pews there. There was a regular bill of sale, however, so that at the very time that Molinelli tendered the sideboard to the plaintiff, it was in the possession of another man. Then after the contract for the pews was completed, the sale to Lamontagne was resiliated, and the sideboard was taken back to the defendant's store. This, on the other hand, would justify the Court in thinking there could not have been a sale. Further, one Olivier Berthelet was taken one day to Molinelli's shop by Donegani himself, and there he was told in the presence of Molinelli, look at this beautiful sideboard I am getting made for myself. This evidence, however, was illegal; and considering that Molinelli failed to tender the article before the 17th November, and that he had previously transferred it to another man, and taking both the equity and the law of the case, the Court was upon the whole reluctantly compelled to say that the plea of the defendant must be rejected, and the plaintiff's action maintained.

Moreau & Ouimet, for the Plaintiff.

Loranger & Loranger, for the Defendant.

ONTARIO CASE.

DEVLIN *v.* MOYLAN.

Toronto, Sept. 30, 1867.

Pleading several matters—Libel — Fair comment on public acts.

The alleged libel purported to be founded on information given to the defendant by a "resident of this city, yesterday" (meaning the day before the publication). One of the pleas sought to be pleaded, alleged that the *gravamen* of the charge was matter of public notoriety and discussion," and that the words used were a fair comment, &c., and making other statements which, it was alleged, would enable defendant to introduce evidence of irrelevant matters.

Held, that a general plea that the publication was a fair *bona fide* comment, &c., might be pleaded; but the plea, as now framed, was inconsistent with the words used in the alleged libel, and could not be allowed.

This was an action for an alleged libel in the *Canadian Freeman*. The words complained of were as follows:—"1844—What became of the repeal rent? An old repealer, a resident of this city, informed us yesterday, that in 1844, Mr. Barney Devlin was the recipient of a considerable sum subscribed towards the cause of repeal, that did not reach the Conciliation Hall; could not Mr. Hanly, or Mr. Brennan, or some of the old residents of Montreal West, ask Barney for some information on this important point? by all means let there be light thrown on the repeal rent."

The defendant proposed to plead, with others, the following plea: "That before, and at the time of the publication of the alleged words, the defendant was a candidate for the representation of the Western Electoral Division of the City of Montreal, in the House of Commons in Canada; that during his candidature, questions arose and were publicly discussed as to certain contributions of money which the defendant had received in 1844, in the public capacity of Treasurer, to promote the repeal of the union between Great Britain and Ireland, and which it was publicly alleged had not been paid over for that purpose; that the said questions as to the receipt and disposition of such money, were matters of public notoriety and discussion, and were and are matters which it was lawful, fit, and proper to discuss in reference to the defendant's said candidature, and the alleged libel was, and is, a fair comment in a public newspaper on the public acts and conduct of the defendant; and the said words were published by the defendant believing the same to be true, and without any malice."

McKenzie, Q.C., opposed the allowance of the plea, because it would enable the defendant, improperly, to introduce evidence of many irrelevant matters, and that the plea, if allowed at all, should be simply, that the publication was a fair comment upon the plaintiff's conduct and proceedings.

ADAM WILSON, J. The alleged libel purports to be founded on information given to the defendant by "an old repealer, a

resident of Toronto, yesterday," that is, the day before the publication; while his plea professes to rest the excuse and justification for the publication, upon the fact that the matters of the libel were the subject of public notoriety. These do not seem to me to be at all consistent with each other. The defendant is apparently shifting his ground from that which was expressly taken at the time of the publication. That which he learned afterwards—assuming that he did so learn it all, can, in the nature of things, be no excuse or justification for what he did before he did learn it. I cannot allow the plea as at present framed; but if the defendant choose to frame it as a general plea, that the publication was a fair and *bona fide* comment, &c., I will allow it for what it may be worth. In an action of this kind, the defendant should be allowed every reasonable opportunity to excuse or justify his conduct, consistent with the plaintiff's rights, and the fair and convenient prosecution of the action.—*U. C. Law Journal.*

RECENT AMERICAN DECISIONS.

Nuisance—Tomb erected on Land.—A tomb erected upon one's own land is not necessarily a nuisance to his neighbor; but it may become such from locality and other extraneous facts. Plaintiff proved that defendant's tomb, erected within 44 feet of the former's dwelling-house, contained, in 1856, nine dead bodies, from which was emitted such an effluvium as to render his house unwholesome; that, after an examination by physicians, the bodies were removed; that the tomb remained unoccupied thereafter until 1865, when another body was interred therein; that the plaintiff's life was made uncomfortable while occupying his dwelling-house, by the apprehension of danger arising from the use of the tomb; and that the erection and occupation of the tomb had materially lessened the market value of his premises. In an action for damages on the foregoing facts: *Held*, a non-suit was improperly ordered. *Barnes* v. *Hathorn*, 7 Am. L. Reg. 81.

Engagement at Fixed Salary—Wrongful Discharge.—Where a person employed for a certain term at a fixed salary, payable monthly, is wrongfully discharged before the end of the term, he may sue for each month's salary as it becomes due; and the first judgment will not be a bar to another action for salary subsequently becoming due. *Huntingdon* v. *Ogdensburgh and Lake Champlain Railroad Co.*, 7 Am. L. Reg. 143.

Liability of Carrier.—A carrier may by special contract limit his liability except as against his own negligence. Where a person delivers goods to a carrier and receives a bill of lading expressing that the goods are received for transportation subject to the conditions on the back of the bill, by one of which the carrier's liability is limited to a certain rate per lb., this constitutes a special contract by the parties, and the carrier, in the absence of proof of negligence, is only liable at the rate agreed upon. *Farnham* v. *The Canadian and Amboy Railroad Co.*, 7 Am. L. Reg. 172.

Carrier.—Plaintiff took passage on the steamer of the defendants, and paid her fare, which included her board on the passage, a state-room, and lodging. She was assigned to the room by the proper officer of the boat; and another woman, a stranger to the plaintiff, was afterwards assigned to the same room. The plaintiff, when she went to bed, left her dress, in the pocket of which was her portmonnaie, with some personal jewelry, and money for her travelling expenses, on an upper unoccupied berth. During the night, while the plaintiff was asleep, the money and jewelry were claimed to have been stolen, but whether by some one from without, or by the other woman within, did not conclusively appear, though the evidence tended to show that it was stolen from without, through a window which the steward of the boat knew to be broken. As to whether the defendants were liable for the property, if stolen, the court were equally divided, two of the judges holding the defendants liable, as carriers, to the same extent an innkeeper would have been for a similar loss by a guest oc-

cupying a room at his inn, and the other two denying such liability.—*McKee* v. *Owen*, 15 Mich. 115.

Evidence.—Upon a trial for rape, if the woman alleged to have been forced is examined as a witness for the State, she may be asked on cross-examination, whether at a specified time and place she had illicit intercourse with a certain person named, other than the prisoner.—*State* v. *Reed*, 39 Vt. 417.

Innkeeper.—The price of entertainment furnished by an innkeeper to an infant, not knowing that the latter is acting contrary to the wishes of his guardian, may be recovered by him, and he has a lien on the baggage of his infant guest for such price, and also for money furnished the infant, and expended by him in procuring necessaries. An innkeeper is bound to entertain all guests apparently responsible and of good conduct; and the mere fact of infancy alone in the applicant would not justify him in refusing. Hence, although an infant may in general avoid his contracts which are not for necessaries, yet the law will not allow him this privilege when the contract is, as in this case, legally compulsory on the part of the adult.—*Watson* v. *Cross*, 2 Duvall 147.

Insurance.—A policy of insurance against fire provided that, in case of loss, the insured should give immediate notice, and as soon as possible render under oath a particular account of such loss, "stating whether any and what other insurance has been made on the said property, *giving copies of the written portions of all policies thereon.*" The insured, in his affidavit, stated that there were $300 additional insurance made on the property; viz: a policy believed to be dated Jan. 27, 1863, and numbered 6,736, in the Mechanics' Mutual, of Milwaukee, Wis., on the building;" and that he was unable to furnish a written copy thereof, because the policy had been mislaid, and the company had no record of the written part of it. *Held*, that the furnishing such copies was a condition precedent to the plaintiff's right of recovery, and that he had not complied therewith.—*Blakeley* v. *The Phœnix*, 20 Wis. 205.

2. When it is provided in a policy of insurance that all claims are to be barred unless prosecuted within a year from the date of the loss, the condition is complied with by commencing an action thereon within the year, and in case that action is abandoned for good cause, and another instituted promptly, but after the expiration of the year, the assured is not barred.—*Madison Ins. Co.* v. *Fellowes*, Disney, 217.

Legal Tender.—A great many decisions are being rendered on this point in the United States, and as we now have legal tender notes in Canada, it may be interesting to cite a few of the American cases.—1. Congress has constitutional power to issue Treasury notes of the United States and make them lawful money, and a legal tender for the payment of debts. 2. The Act of Congress of Feb. 25, 1862, authorizing the issue of such notes, is constitutional. 3. The principal sum which redeems a ground rent is a debt within the meaning of the Act. 4. A ground rent, payable in "——dollars, lawful silver money of the United States of America," is redeemable by such notes.—*Schollenberger* v. *Brinton*, 52 Penn. St. 9, 100.—5. So the half-yearly instalment of a ground rent, payable in "——dollars, lawful silver money of the United States, each dollar weighing 16 dwt. 6 gr., at least."—*Mervine* v. *Sailor*, *ib.* 18, 45, 102. 6. So a certificate of deposit of "625 dollars, gold, payable in like funds, with interest."—*Sandford* v. *Hays*, *Ib.* 26.

Telegraph Company.—In an action by the defendant in error to recover damages resulting from the incorrect transmission of a message from Detroit to Baltimore over the plaintiff's lines, it appeared that the message was written upon a blank furnished by the company, on which was printed a notice calling attention to certain regulations established by them, printed on the back, and requesting them to send the message subject thereto; among others, that the Company would not be responsible for errors or delay in the transmission of unrepeated messages; that an additional

charge would be made for repeating messages; and that it would assume no liability for the errors or neglect of any other company over whose lines the message might be sent to reach its destination. The plaintiff's lines only extended to Philadelphia, to which point the message was correctly sent. It also appeared that the defendant had never read these regulations nor had his attention called to them, and that he did not in fact know that the message would pass over any other lines on its way to Baltimore. *Held*, that telegraph companies, in the absence of any provision of the statute, were not common carriers, and that their obligations and liabilities were not to be measured by the same rules, but must be fixed by considerations growing out of the nature of the business in which they are engaged; and that they do not become insurers against errors in the transmission of messages, except so far as by their rules and regulations, or by contract, they choose to assume that position; that in such a case as the present, the printed blank was a general proposition to all persons of the terms and conditions upon which messages would be sent, and that by writing the message and delivering it to the company, the defendant accepted the proposition, and it became a contract on those terms and conditions, and that the regulations were reasonable.—*Western Union Tel. Co.* v. *Carew*, 15 Mich. 525.

BANKRUPTCY—INSOLVENTS.

(From the Canada Gazette.)

December 14.—Wm. Davis, St. Catharines; Jos. H. Dunning, Montreal; Geo. Earle, Point Edward; Jules Fournier, Montreal; Henry Gawler; G. W. Johnson; Thos. Lewis. Richmond; Alex. W. Macdonald, Toronto; Jas. L. McLellan, Harley; Wm. Morris, M.D.; John A. Nellis; Chas. Quevillon, Montreal; Manly Conyne Roblin, Wyoming; Joshua Smith, Ottawa; John Taylor, Lachute; Robt. Virtue (of Virtue & Boon), Montreal.

December 21.—Wm. Begg, Kingston; Wm. Cowan, Merrickville; Zephirin Pilon, St. Lin; John Ogilvy Moffatt, Montreal; Germain Pelletier, Sorel; Geo. Flinn, Niagara; John Joslin, Chatham; Jeremiah Hilliker, Waterloo; Roy & Bédard, Quebec; Alex. Wallace, Barrie; Sam. Snider, Brantford; Geo. W. Anger, Simcoe; Edw. Papin, L'Assomption; G. Crépeau, St. Norbert d'Arthabaska; Narcisse Palin, St. Cyprien de Napierville; James Shannon, Kingston; Louis Gorth, Galt; Andrew Hall Reed, Belleville; Wm. E. Phelps, Brantford; Geo. Soroggie, Galt; Jules Leger, Montreal; Wm. Earl, North Gwillimsbury; Francis Michell Woolcock, Barrie; Richard C. McDonagh, Quebec; Hugh Jefferson, Toronto; Olive A. Crépeau, St. Norbert d'Arthabaska; Robt. McGregor, Brantford; Chas. Weyms, Brantford; Donald and Angus Morrison, Bothwell; Chs. Rapin, St. Jean Chrysostome; Michael Gannon, Montreal; Jas. Walker, Camp d'Or; Chs. Daigle, St. Ferdinand d'Halifax; John Alex. Taylor, Belleville.

December 28.—F. W. Gates and J. O. Macrae, (F. W. Gates & Co.,) Hamilton; John Hill, Merrickville; John Cox, Seaforth; Jas. Blakeley, Napanee; Thos. Edwards, Montreal; Edw. Erratt, Merrickville; Chas. Leclère, St. Paul de Chester; Patrick David Dunn, Montreal; Chas. Nelson, St. Hyacinthe; Jos. N. Duhamel, Montreal; Isaac Brock Markle, Berlin; John Kennedy, Galt; Jas. Edgar, St. Catharines; Wm. H. Delisle, Brantford; John St. George Detlor, Napanee; George White, Bryanston; S. M. Yarwood, Port Stanley; Geo. Alexander, Guelph; Patk. Langan, Toronto; M. B. Ford, Mount Forest; John Johnston, Grafton; Hill & Erratt, Merrickville; Wm. Palen, Ottawa.

1868. January 4.—Andrew Gage, Hamilton; Thos. Knight, St. Thomas; Ferdinand Firmin Perrin, Montreal; Caroline Gintler, wife of M. Gauthier, Montreal; Joseph Meunier, Repentigny; Joseph Wright, Dundas; Thos. Howard Mackenzie, Dundas; Almond Dean, Hamilton; Jacob Winger, Dunnville; Thomas Hughes Graydon, St. Catharines; Geo. Murray, Windsor; Henry Roots, London; Wm. Bates, East Nissouri; Edw. McGarvey and Wm. F. Thompson, Sarnia; John C. Fox, Kingston.

January 11.—Richard P. Strickland, Lennoxville; John Vanatter, Stratford; Alex. McLennan, Stratford; Edw. Hiscott, St. Catharines; Chas. and James Shields, Smith's Falls; Robt. Bickell, Hope; David Williams, Murray; David Fenton, Brampton; Olivine Heroux, wife of Timoleon Poirier, St. Isidore; Geo. Lougheed, Albion; John M. Thornton, Hamilton; Jas. Arbuthnot McNaughton, of McNaughton & Brown, Montreal; Donald McDonald, Kingston; W. H. Rice & Son, Montreal; Narcisse Palin, St. Cyprien; Hy. Duffin, Toronto; Wm. C. Matchitt, Lindsay; Jas. Alex. Ovas, Berlin; Walter Hyde Martin, Brantford; Geo. Winter, Brantford; Thos. Atkins, Owen Sound; Samuel Hopkins, Montreal; A. M. Greenwood, Stanstead Plain; Don Carlos Curtis, Belleville; Levi Jones, Toronto.

January 18.—Hubert B. Lefebvre, of Beaudry & Lefebvre, Montreal; Ferdinand Legendre, Three Rivers; Wm. Baker, Belleville; Jas. S. Kelley, Quebec; Wm. Stuart, Galt; C.A. Starke & Co., Montreal; David Brown,, of W. & D. Brown, Montreal; David C. Honsberger Dunnville; Philip H. Niger, Welland; Wm. N. Barrie and John McMartin, L'Orignal; John Hubnar, Oakville; W. T. Gemmill & Co., Montreal; Jas. Payton, Rawdon; Jesse Thayer, Montreal; A. & D. Shaw, Kingston; A. J. Desjardins, of Desjardin & Quevillon, Montreal; Antoine Deguire, St. Clet; Archibald McAlpine, Esquesing; Isidore Bernardin, Buckingham; William Crépeau, St. Norbert d'Arthabaska; Octave Lachance, Sorel.

MISCELLANEOUS.

HANDCUFFING. — The Fenian prisoners, charged with the murder of policeman Brett, were handcuffed during their examination before the magistrates at Manchester. Their counsel, Mr. Ernest Jones, demanded that the irons should be removed, and, on the refusal of the magistrates, threw up his brief. The conduct of the magistrates is generally approved, for though the practice of handcuffing is unusual, yet it has never been pretended that prisoners have a right to be free from restraint, where there is reasonable ground

for apprehending a rescue or escape. A correspondent of the *Law Times* mentions a case in 1864, where three men, arrested at the instance of the United States, with a view to their extradition on the charge of piracy, were kept handcuffed for three days, during the hearing before the Court of Queen's Bench on a *habeas corpus*, and were only freed from their irons when the Court gave judgment for their discharge from custody.

LEGAL ETIQUETTE.—The *Spectator* has an article on the rules of etiquette observed by the English bar. Some of them are rather fanciful, not to say absurd. Thus, a barrister is not allowed to go into the coffee-room of a hotel while on circuit. "It is not every circuit that allows its members to go inside a hotel. On the Western Circuit, we believe, barristers are still compelled to take lodgings." "As for a barrister dining with an attorney, that is a high crime and misdemeanour, which, in one instance, was visited by a fine of five guineas." "A barrister must wear a black waistcoat. He must not bring a blue bag into Court. He must not buy a red bag. A red bag must be given him by a Q.C., and he must pay a great deal more than its value to the wine fund of the mess." "Some say a barrister may not tell an attorney that he is coming on the circuit where the attorney lives; others add that he may not ask a friend or relation to tell an attorney that he is coming on that circuit, or ask a friend to ask an attorney to give him business. If a friend chooses to do this of his own accord, there is no harm in it. But you may not jog your friend's memory. If you want a place under Government, there is no harm in asking for it, in getting others to ask for it, in asking others to get others to ask for it. A barrister may move all his friends and acquaintances to procure him an assistant commissionership at the rate of five guineas a day. But a guinea brief is far more valuable and more sacred, and must be adored in silence."

RHYMED DEED.—The following is an ancient rhymed deed:—

"I, John O'Gaunt,
Do give and do grant
To Roger Burgoyn,
And the heirs of his loin,
Both Sutton and Putton,
Until the world's rotten.
There is no seal within this roof,
And so I seal it with my tooth."

A FASTIDIOUS JUDGE.—At the last sitting of the Tunbridge County Court, the judge, Mr. J. F. Lonsdale, made the following observations: In consequence of several parties having business in the court coming in their working apparel, he wished to state that all persons who came to that court, which was the Queen's court, should be properly dressed, and not in their working clothes, and had they any claim for expenses he should disallow them. He considered the court had dwindled down in this respect as bad as the old court of conscience. Of course, if parties had no better clothes to put on they were to be pitied, but generally speaking persons when they went out on the slightest occasion put on their best clothes. Very frequently people came to the County Court just as if they had been fetched out of the street to a police court. It was very disrespectful to himself, and very annoying to a well-dressed person, to sit beside a miller or a baker who was in his working clothes. He certainly should be very strict in this matter in future, and should most decidedly disallow any person expenses who came to court dressed in a manner which he considered was disrespectful to himself and the court. — It is difficult to believe that Mr. Lonsdale was in earnest when he decreed that nobody should come into his presence unless clothed in his "Sunday best." A baker, hot from the bakehouse, a miller, fresh from the mill, is not a pleasant neighbor in a crowded court; still less so is a chimney-sweep; but courts of justice are for all classes and all callings, and the well-dressed and the fastidious must submit to an occasional dusting of their coats, or offending of their noses, in return for the

advantages they derive from the existence of tribunals which secure to them the possession of the good things with which a happier lot has blessed them. Certainly a judge travels out of his proper province when prescribing how suitors and witnesses shall be clothed; and to refuse costs to a man because he wears a dirty coat is a stretch of power which would invite grave censure were it not so utterly ludicrous. We trust Mr. Lonsdale will reconsider his hasty resolution, and we are sure that no judge will follow his example.—*The Law Times.*

After the grand jury at the last Cork quarter sessions had concluded their business, it was discovered that the book upon which they had been swearing witnesses was not a Testament, but a copy of "Thomas a Kempis," and the whole of the proceedings had to be recommenced.—*Solicitors' Journal.*

A SHORT WILL.—The will of Mr. Kenneth Macaulay, Q. C., formerly M.P. for Cambridge, is contained in these few words:—"One thousand pounds to my brother Tom, all the residue to my dearest wife absolutely.—Kth. Macaulay." The will is without date, but was written by the testator on April 22 or 23, 1865. The testator was cousin of the late Lord Macaulay.

TENURE OF LAND IN GREAT BRITAIN. — In a recent lecture in Manchester it was stated, that in 1770, there were 250,000 landlords who owned land, while now there are less than 30,000, of whom nearly 9,000 are in Ireland. Five noblemen, the Earl of Breadalbane, the Dukes of Argyle, Athol, Sutherland and Buccleugh, own one-fourth of the land in Scotland. Twelve possess one-half, and half of England belongs to about one hundred and fifty persons. The income of the 30,000 land owners was estimated at £150,000,000 per annum.

AN AMUSING AND SOMEWHAT UNCOMMON LAWSUIT has just been made known. Plaintiff, M. David, a carpenter; Defendant, Charles IV., reigning Prince of Monaco; bone of contention, the paltry sum of 35f., claimed by the carpenter for having repaired the prince's saloon railway carriage. Fancy a monarch, regardless, perhaps, of all counsel and advice, incurring such tremendous expense! Well, the *Juge de Paix* has condemned his Serene Highness to pay for it; but, on the other hand, the king has forbidden his territory to the daring carpenter. Evidently the only thing that the latter has to do is to have the principality seized and sold by auction.—*Law Times.*

LORD BROUGHAM has left for Cannes, in the South of France. He is to travel at easy stages, and prolonged over several days, so as not to fatigue him unduly. His yearly departure from Brougham Hall greatly distresses him. Last year, just before leaving, he went through every apartment of the old place, weeping disconsolately, as if it was his last farewell of a familiar scene.

DEPOSITS IN BANKS.—A case of some interest to depositors in banks in France has been submitted to the Tribunal of Commerce. A merchant, named Maguet, opened an account with the Société Générale pour Favoriser le Developement du Commerce et de l'Industrie. The book given him—*carnet* the French call it—showed that he had made at different times deposits amounting to 26,007 francs. One of the deposits entered bore the date of the 5th of January, 1867, and was of 6,000 francs. But the Bank alleged that it had only received 20,007 francs, and refused to acknowledge itself liable for more. Its books, it said, showed that a deposit of 6,000 francs had been made on the 22nd of December, 1866, and that it formed part of the said 20,007 francs; but that no deposit of 6,000 had been made on the 5th of January, and that it was by error that the receipt of such a sum on that date was recorded in the *carnet*, and certified by the initials of the cashier. The question, consequently, was, whether the bank was to be bound by its own entry in the *carnet*, or the customer by that in the bank books. The court ruled that "it was impossible to admit that in the relations which are now established between banks and depositors, the latter can be exposed to discussions upon deposits made by them personally, or by other parties on their account, which have

been regularly inscribed in the *carnet*, which inscription is proof for the depositor of the deposit having been made." It accordingly condemned the bank to credit M. Maguet with the 6,000 francs, and to pay him interest thereon.

A Story of the French Bar.—M. Paul Girard, in a sketch of the eminent French advocate, Maître Emmanuel Arago, gives a curious illustration of the license which the members of the bar in that country occasionally allow themselves on behalf of their clients. The case in which M. Arago first made a reputation was the trial of a young man named Huber, and Mad'lle Laure Gouvelle, for a plot against Louis Philippe. M. Arago, in defending the former, exclaimed, "Huber is a man whom I esteem, whom I love, whom I shall never forget, as I hope he will never forget me—a man, a gentleman, whom I could desire to be my own brother. Surely you will give him back to me." At the close of this singular peroration the impassioned counsel fell upon his client's neck and embraced him. The jury, however, took their own view of the case, and returned a verdict of guilty. When the prisoner appeared to receive sentence, M. Arago again hugged his client, while M. Jules Favre, who defended Mad'lle Gouvelle, flung himself into her arms and kissed her—perhaps a more natural and pleasant proceeding. "In fact," as M. Girard remarks, "there was a great deal of embracing in that case."

—Lawyers often indulge in grim humor, as an incident, related of a certain London barrister, shows. On one occasion, being a candidate for an election, he gave liberal orders to all the tradesmen whose votes he hoped to secure. This generous course involved him in the ordering of a handsome coffin from a flourishing undertaker who had a vote. After the election, the coffin was, to the great dismay of the family, sent home in a handsome hearse. The servant refused to admit it, but the lawyer himself, coming to the rescue, directed that it should be placed under his bed for the present; but to this proceeding his indignant spouse would not consent. The servants of the house also threatened to leave. So the lawyer sent the obnoxious article to his office, where it now lies, containing voluminous law reports and other records of dead cases. If a brother lawyer wishes to borrow a law book, he is coolly referred to the coffin, and he generally remarks that it is "no matter—he'll step into the next office." In this way the legal coffin proprietor preserves his law library intact.

—During Abraham Lincoln's practice of his profession of the law, long before he was thought of for President, he was attending the Circuit Court which met at Bloomingdale, Illinois. The prosecuting attorney, a lawyer by the name of Lamon, was a man of great physical strength, and took particular pleasure in athletic sports, and was so fond of wrestling that his power and experience rendered him a formidable and generally successful opponent. One pleasant day in the fall, Lamon was wrestling near the court-house with some one who had challenged him to a trial, and in the scuffle made a large rent in the rear of his unmentionables. Before he had time to make any change he was called into court to take up a case. The evidence was finished, and Lamon got up to address the jury, and having on a somewhat short coat, his misfortune was rather apparent. One of the lawyers, for a joke, started a subscription paper, which was passed from one member of the bar to another as they sat by a long table fronting the bench, to buy a pair of pantaloons for Lamon, "he being," the paper said, "a poor but worthy young man." Several put down their names with some ludicrous subscription, and finally the paper was laid by some one in front of Mr. Lincoln, on a plea that he was engaged in writing at the time. He quietly glanced over the paper, and immediately took up his pen and wrote after his name, "I can contribute nothing *to the end in view*."—*Bench and Bar.*

Hatton once uttered a capital pun: "In a case concerning the limits of certain land, the counsel on one side having remarked with explanatory emphasis, 'We lie on this side, my lord;' and the counsel on the other side having interposed with equal vehemence, 'We lie on this side, my lord,' the Lord Chancellor leaned backwards and drily observed, 'If you lie on both sides, whom am I to believe?"—*Jeaffreson.*

SUSPENSION FROM PRACTICE.

We have received from the Secretary Treasurer of the General Council of the Bar an official notice of the suspension of Mr. Theophile Gauthier from practice, for two years, from the 5th October, 1867. The judgment of suspension not having been appealed from stands confirmed. The charge against Mr. Gauthier was exceedingly grave, and the Council of the Bar appear to have dealt leniently with the offender. The judgment is as follows:

"Having seen and considered the *acte d'accusation* fyled in this cause, the 1st of June, 1867, signed by the Syndic, and the affidavit of Julie Bousquet referred to therein, seen also the plea of defense of the accused, the said Theophile Gauthier, having also heard, seen and examined all other the exhibits, papers and evidence of record; Having heard the accused by his Counsel, Hugh McCoy, Esq., Advocate, and also J. A. Perkins, Esq., Advocate, Counsel for the said Julie Bousquet, upon the merits; Considering it proved that on or about the 14th of December, 1866, at Montreal, the accused obtained from said Julie Bousquet, in consideration of the receipt mentioned in the said *acte d'accusation*, said receipt purporting to be signed by "Lesage & Jette," her note for $218, of record, under pretence by said Theophile Gauthier, of settling the cause No. 766, Ludger Ayotte, Plaintiff, against Dame Julie Bousquet et *Vir.*, the signature "Lesage & Jette, Avts. du Demandeur," to which said receipt was counterfeit and was not written or authorized to be written by said Lesage and Jette or either of them; Considering that said receipt is proved to be in the handwriting of the accused and to have been by him delivered to said Julie Bousquet, that he is responsible for said signature to said receipt; Considering that the charge against the accused has been proved, said charge involving an offense affecting and derogatory to the honor and dignity of the profession or Bar. The Council so represented and acting upon vote, *vivâ voce*, as prescribed by law, do *unanimously* find him, the accused, the said Theophile Gauthier of Montreal, Advocate, *guilty*, to wit, of the offense and misconduct so charged against him in this cause or prosecution, and in consequence, do deprive him for the term of two years, from the date hereof, of the right of voting at, and even of the right to assist at the meetings of the Section of the Bar of the District of Montreal, and do further adjudge and sentence him, the said Theophile Gauthier, to be suspended from his functions as a member of the Bar, Advocate, Barrister, Attorney, Solicitor, and Proctor, for the term of two years from the date hereof, and do condemn him to pay costs to said Julie Bousquet, said costs taxed at four pounds sixteen shillings, *distraits* to J. A. Perkins, Esq.

(Signed) Robt. Mackay, Rouer Roy, A. A. Dorion, F. Cassidy, A. Cross, A. Robertson, J. O. Joseph.

CURIOUS ANCIENT TENURES: — THE LATE SHERIFFS OF LONDON AND MIDDLESEX.—During the afternoon of Thursday, the 31st ult. the usual formalities were gone through at the Queen's Remembrancer's Office, Chancery-lane, with respect to the representation of the warrant for the appearance of the late sheriffs to account, and as to rent services due to the Crown by the Corporation of London. The Secondary, the City-Solicitor, and the late sworn under-sheriff (Mr. Crossley) attended, and the usual warrants being put in and read by the secondary, the Queen's Remembrancer ordered them to be filed and recorded. Proclamation was then made:—'Tenants and occupiers of a piece of waste ground called the "Moors," in the County of Salop, come forth and do your service.' Upon which the City-Solicitor cut one fagot with a hatchet and another with a billhook. Another proclamation was then made, viz:—'Tenants and occupiers of a certain tenement called the "Forge," in the parish of St. Clement Danes, in the County of Middlesex, come forth and do your service.' Upon which the City Solicitor counted six horse-shoes and sixty-one nails, and the Queen's Remembrancer having said 'Good number,' the proceedings terminated.—*Law Journal.*

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HON. T. D. McGEE.

Thomas D'Arcy McGee, whose assassination on the morning of the 7th of April, is now one of the striking events of history, and whose loss the people of all Canada have mourned as one man, was a member of the Bar of Lower Canada, and as such, claims some mention even in the columns of a legal periodical. We find it difficult, however, to limit our notice of one for whom we cherished feelings of the warmest personal regard, to that small and comparatively unimportant portion of his career which was devoted to the law. In venturing, therefore, to say a little where much has already been well said, we shall attempt rather to record a few reminiscenses in the order in which they occur to us.

It was about 1858, that Mr. McGee, then a private member of Parliament, considered it worth while to obtain admission to the Bar of Lower Canada, and caused himself to be articled to Mr. E. Carter, of Montreal. We have Mr. Carter's testimony that amid the multitude of matters pressing upon his attention, Mr. McGee found time to render himself familiar with the dry details of legal practice, and to make considerable progress in the study of our jurisprudence. In December, 1861, Mr. McGee was duly admitted, and during the afternoon of the day of admission, laughingly imparted the news to a number of his friends, to whom the fact of his legal studies was not so well known as his more public occupations. He appeared in Court once, and only once so far as we can remember, namely, in the defence of Patrick Lane, in the Court of Queen's Bench, on the 29th of March, 1862. This Patrick Lane was charged with the murder of his wife, at St. John's, C. E. We were present throughout the trial, and well remember the able address with which Mr. McGee enchained the attention of the Jury. It appeared that Lane was, at the time of the act, just recovering from a very violent attack of small pox, which, according to the medical evidence, had brought on a phrensy or delirium, amounting to temporary insanity. Mr. McGee, whose conduct of the defence was marked throughout by the gravest and most earnest attention, adduced numerous instances in point from writers on medical jurisprudence, and obtained a verdict of *Not Guilty*. Those of our readers who may wish to refer to this case, will find a report in the *Herald* newspaper of the 31st of March, 1862. Mr. Driscoll, Q. C., who, we think, introduced Mr. McGee to the Court, and who sat beside him during the day, jocularly observed that he had the honor of being Mr. McGee's father-in-law.

Mr. McGee would, doubtless, had he continued at the Bar, have made an able advocate, though we are inclined to doubt whether practice in the Criminal Courts would have been agreeable to his tastes; but the advent of his party to power, and his consequent elevation to office, afforded his great talents a wider scope. Previous to the Lane trial, he had taken into partnership Mr. T. J. Walsh, a young advocate of whom we remember he had some time previously spoken in the most flattering terms. This partnership, chiefly confined to civil business, continued for some time after Mr. McGee had entered the Ministry. At the meeting of the bar held on the 11th of April, Mr. Day, Q. C., mentioned the singular fact that one of the first civil suits in which Mr. McGee was engaged, bore the number 1848, the number of a momentous year in his own history. He remarked to Mr. Day, who was counsel for the plaintiff, that he feared the number of the cause boded ill for the success of his defence, and subsequently, when his official duties called him away from town, transferred the cause to his learned friend, Mr. Doherty.

About this time, Mr. McGee was frequently solicited to deliver lectures and addresses at public concerts and enter-

tainments. He was obliging enough to comply with most of these requests, and his magic eloquence never failed to charm and instruct the vast concourse that thronged to hear him. He also found time to woo the muses, and composed many beautiful little poems, most of which were printed under a *nom de plume* in various newspapers.

Like most great orators, it was the practice of Mr. McGee to prepare his public addresses carefully beforehand, in writing. In his delivery, he usually amplified the written discourse. The train of thought, and even the mode of expression, was closely followed, but two or three spoken sentences would appear on paper skilfully blended into one. It must not be supposed, however, that Mr. McGee was not a master of extempore delivery. His brilliant parliamentary speeches are sufficient to show that while he followed the rule laid down by great masters, by preparation in writing for stated times and occasions, he was, nevertheless, ready at all times to speak, and speak well, without preparation. We remember hearing him once remark that he found it extremely difficult to *read* an address. On one occasion, previous to a nomination for Parliament, Mr. McGee, having been given to understand that a certain obscure individual was about to be brought forward by his opponents in opposition to him, had prepared a humorous speech, which, if delivered, would have overwhelmed his opponent with the inextinguishable laughter of the audience. At the nomination, however, the courage of the gentleman above referred to failed, or for some other reason, his name was withdrawn. Mr. McGee was not disconcerted in the least by the sudden change, but made an eloquent speech wholly different from that which he had prepared.

The personal appearance of Mr. McGee presented nothing very remarkable. While engaged in the delivery of lectures, his luxuriant black hair was usually allowed to fall unchecked over his broad forehead. His delivery was calm and free from gesticulation. We were much struck once by his remark that while engrossed by the delivery of a lecture, the audience became a perfect blank to him, his perception of external objects being suspended by the concentration of his mind upon his subject.

Few persons ever won their way so quickly to the hearts of those among whom they moved, as Mr. McGee. Few persons have had such hosts of friends of all political shades. It is remarkable that in the first hasty announcement of his death by the press throughout the length and breadth of Canada, and in the outbursts of sorrow at indignation meetings, the language rather indicated grief at the loss of a personal friend, than lamentation at a public calamity. Even when thrown into the company of those much younger than himself, and of wholly different pursuits, Mr. McGee speedily attracted their love and admiration.

Not a little has been said by various writers respecting Mr. McGee's profound acquaintance with history and general literature. It was, indeed, wonderful, and no more than justice has been done to him in this respect. But we have not seen much said about the genial humor which was one of his characteristics. Every one who has had the privilege of conversing with him will at once recall numberless sallies of wit. One of those which occurs to us while we write, being connected with an historical event, may bear insertion here. At the time of the *Trent* affair, an effort was made to raise an Irish battalion of which Mr. McGee was to be colonel. One evening after coming from a meeting of those engaged in organizing the corps, he happened to be writing something on the subject at a table under a flaring gas jet. While rising, with his attention fixed on what he had been writing, his luxuriant tresses came into contact with the flame, and took fire. Mr. McGee immediately exclaimed: "You see, I am able to stand fire already!"

Literature was his idol, and politics the business which the accidents of birth and fortune had thrust upon him. But amid all the absorption of official life, he sighed

after learned ease and retirement. On one occasion, while Mr. McGee held the office of Minister of Agriculture, the conversation turned upon Goldsmith. Mr. McGee was eloquent in his praises of the author of the Deserted Village, and after several apt quotations, exclaimed: "I would rather be known as the author of a good tale or a good poem, than fill any office in Canada. But," he added somewhat sadly, "I am in the ring now, and cannot help myself." The little poems, which appeared from time to time in Canadian journals, at first over a *nom de plume*, and subsequently over his initials, were the children of his leisure hours, and are the truest reflection of his own character. His last literary effort was a touching tribute in verse, to the memory of his friend, Mr. Devany, which, followed so speedily by his own sudden death, will always be read with melancholy interest.

ADMINISTRATION OF JUSTICE IN THE PROVINCE OF QUEBEC.

If the violent agitation respecting the mal-administration of justice which prevailed about a month ago results in some definite reform and permanent benefit to the country, the pain and injustice inflicted upon several members of the bench by that public discussion may be to some extent compensated. But much of what was said and written upon the subject was too vague to be useful. The writers too often displayed their entire ignorance of the facts, and, by indiscriminate abuse of the judges, excited a feeling of disgust in those acquainted with the truth. The real grounds of complaint have been already pointed out by us on several occasions, and all the discussion of last month threw no new light upon the subject. One of the most serious defects is well indicated by what transpired in the House of Commons on the 26th of March, when Mr. Workman, the member for Montreal Centre, inquired "whether it was the intention of Government, at as early a day as possible, to appoint a fifth judge in the Court of Queen's Bench for the Province of Quebec, and thereby remedy the great inconvenience and loss now suffered by suitors." Mr. Cartier replied that there was no actual vacancy in the Queen's Bench. One of the judges had tendered his resignation, but it was accompanied by a demand for retiring allowance, and the matter was then under the consideration of Government. In other words, owing to some ill-judged parsimony in the settlement of pensions, the highest tribunal in the country was left incomplete, and one of the judges who deserved most from the State was left month after month in an embarrassing position.

The debate in the House of Commons on the 30th March was almost necessarily of such a painful and personal character, that we feel much reluctance in adverting to it. The discussion substantially confirms what has been already stated. As Mr. Abbott, Q. C., very clearly pointed out in the course of the debate, the difficulty in Montreal has not arisen from the incapacity or immorality of the judges, but from want of a sufficient number to carry on the work. We all know how heavily the judges of the Superior Court at Montreal have been, and are taxed, in consequence of the absence of Mr. Justice Smith. It is not fair to make these gentlemen responsible for delays beyond their control. Nor is it fair to describe the judges generally as infirm and immoral, because, in the first place, the want of an adequate pension fund, and, in the next place, the absence of a sufficiently powerful public opinion, has permitted several persons to retain seats on the bench to whom the epithets infirm or immoral may without injustice be applied. Mr. Cartier, in defence of his appointments, referred to some of the judges in terms in which we heartily concur. "In the matter of industry and ability," said he, "no honest lawyer could complain of Mr. Justice Mondelet. If there was upon the bench any judge desirous and capable of discharging his duties faithfully and impartially, it was Mr. Justice Berthelot. Judge Monk was an ornament to his profession. He had recom-

mended Judge MEREDITH, and also Judge TASCHEREAU, whom he had known as a most hardworking man, the most valuable quality which a lawyer could possess. After complimenting some other gentlemen occupying seats on the bench, he referred in high terms to Judge WINTER. The last recommendation for which he was responsible was that of Mr. Justice BOSSE, whose eminence in his profession was indisputable."

Mr. CARTIER went on to say :—"The true difficulty in remodelling the judiciary had been already most justly stated to be the want of any means of pensioning old or infirm judges, for which they had only £2,000 at their disposal in Lower Canada, on which small fund there were already some charges existing. It was quite correct, as had been stated, that the business to be transacted in Montreal was equal to that of all the rest of the Province, and the absence or illness of any judge necessarily occasioned inconvenience. He went on to relate the circumstances under which Mr. Justice Smith had taken leave of absence on the ground of ill-health. When at any time it was proposed to a judge to retire, he demanded a pension equal to the full amount of his salary, and the judge to whom the hon. member for Gaspé had referred, who was 85 years old, had ten years ago refused a pension of two-thirds, offered as an inducement to him to resign."

We trust that the Minister of Justice will appeal to Parliament to place the pension fund on a more liberal footing, and also that some regulations will be introduced to prevent judges from setting public opinion at defiance by retaining their seats when obviously disqualified by age or infirmity.

THE FORM OF OATH.

It has always been with some repugnance that we have regarded the use of a testament, generally greasy and much defaced, in administering oaths, and we shall not be sorry to see the day when the practice of kissing the book is abolished. We therefore entirely concur in the following from the *Gazette :*

"We publish a letter, signed L. X., criticising a decision of Mr. Justice Monk refusing to set aside a judgment of a Commissioner's Court on *certiorari*. The ground on which our correspondent insists as being sufficient to quash the proceedings of the lower court is that the witnesses were not sworn on the Holy Evangelists, but on the *Paroissien Romain*. A technical difficulty to giving effect to the objection, even if it were a valid one, probably existed in the absence of anything on the face of the record to show the nature of the book used by the person administering the oath. But L. X.'s question goes further. He asks whether "an oath taken on the *Paroissien Romain* is valid in the eye of the law." We have no hesitation in saying that such an oath is binding both morally and legally. We remember having heard the late Mr. Justice Panet, a man of the highest integrity, explain this very question. We do not now remember how it was raised, but the learned judge explained that the binding nature of the oath depended on its being a solemn undertaking to tell the truth, that the particular form of it was of no kind of importance, that it was prescribed by no law, and that it varied in almost every country in the world. He also remarked that the kissing the book was only the visible sign of adhesion; but that it was not of the essence of the oath; and that this sign might be given in any way which conveyed an acquiescence in the terms of the solemn undertaking. As an illustration of this we may instance the mode of swearing witnesses in the Scotch Courts, where no book is used. There the witness holds up his hand and repeats the words of the oath. The Jews, too, in our Courts here, swear on the Old Testament, and with their hats on. As there is no special law here for the Jews in this matter, if L. X. be right that the oath is not valid unless the person be sworn on the Holy Evangelists, then the Jews never testify in our Courts under oath. We do not think it wise on the part of Magistrates and Commissioners to make such innova-

tions on well-known and established practice as that complained of by L. X.; but we have no doubt as to the validity of the oath so taken, or taken on the English prayer-book, as a substitute for the *Paroissien Romain*."

LEGAL COSTUME.

At the opening of the Superior Court Term, on the 17th of February last, Mr. Justice MONDELET observed:—"The rule which requires Queen's Counsel and barristers practising in the Court, to appear habited in black, with robes and bands, must be strictly enforced, and no one can be allowed to address the Court unless properly habited. I say this not from any personal reason, but out of the great respect which I entertain for the profession to which I have the honor to belong."

Every one must admit that the rule while it exists should be enforced, so as to secure uniformity. The tendency here is to drop all ceremony of dress. No doubt costume has been carried to an absurd point in England, where barristers and judges are growing heartily sick of the ugly wig they are doomed to wear. We would not be surprised to see the horsehair wig speedily pass into the category of things that were. On the other hand, it would take some time to reconcile us to the free and easy style of most American Courts. But these things are matter of use more than anything else. Twenty years ago, a business man possessed of the natural adornments of beard and moustache would have been looked upon as unfit to hold an office of trust. Even four or five years ago, if we remember aright, the moustache was censured by one of our Superior Court Judges as "indecent."

CHARLES D'AOUST.

We must withdraw from the ordinary agitations of life, in order to appreciate the memory of a man who, during all his days, knew how, in the midst of pain, to find for himself an asylum, a peaceful solitude, where contemporary passions did not enter, and where opponents and friends always found a calm and benevolent man. Charles D'Aoust was one of those rich natures, whom it is difficult to judge except by their peers, so rare is it for men to pass through the lives of politicians and journalists without accumulating around them the dust of hatred and resentment. He was born at Beauharnois, on the 26th of January, 1825, and studied at the Chambly College. According to the evidence of his companions he had no equal in the studies where talent could be shown. He was the first child in that parish, whose parents had thought of sending him to College. At that period the fairy dream of a farmer's wife was to become the mother of a cure. The administration of the College had need of professors, and the prospect of the services which might be rendered by a man so prodigally endowed, inspired the Directors to show him attentions which were powerful auxiliaries to the maternal desires. Thus before he had time to form a personal opinion, Mr. D'Aoust one day put on the soutane as he might have changed his shirt. But the next year, 1845, he threw off his robe, and embraced the study of law under Mr. Drummond. In 1852, the managers of *Le Pays* were much embarrassed to whom to confide the editorial charge of that journal. Mr. D'Aoust had gone to practice his profession in the locality of his birth, where there was then only a Circuit Court, and no career for his talents. He had, as to literature, only the remembrances of College and some trifling essays in *L'Avenir*, and this was small preparation with which to cross steel with professional combatants. He resisted stoutly the proposition that he should take charge of the *Pays*; but, as he was incapable of a long resistance, he yielded. Two years after, in 1854, he was sent to Parliament with some fifteen members of the same party. Perhaps the charge of his journal diminished his force as a Member of Parliament; perhaps it was natural timidity, or both. Those who have heard him speak in Court, or on the hustings, know that he was able to play a brilliant part, speaking, as he wrote, easily,

correctly, not noisily, but with wealth of expression and quiet and far-seeing vigour. Mr. D'Aoust, when defeated in 1858, gave himself up to his profession, renounced public life, and had become indifferent to politics, when he was seized a year ago by the disease which has just carried him off. He was a journalist without trickery or provocation; replying to insults with good humour. He occupied with honour the seat of President of the Canadian Institute, leaving behind him there, as elsewhere, the reputation of unchangeable good temper.—*Le Pays.*

APPOINTMENTS.

The Hon. Charles D. Day, of Montreal, to be arbitrator for the Province of Quebec, for the division and adjustment of the debts, credits, liabilities, properties, and assets of Upper Canada and Lower Canada. (Gazetted 3rd Feb., 1868.)

Charles W. Deegan, Esq., to be Registrar of the County of Ottawa, in the stead of James F. Taylor, deceased. (Gazetted 30th March, 1868.)

ACTIONS FOR SEPARATION.

The following Index to the actions for separation as to property, instituted during the year 1867, may be found useful. The figures refer to the page of the *Canada Gazette* for 1867.

Armand, Charlotte, 1062; Belanger, Sara, 3766; Benoit *dite* Livernois, Theophile, 3672; Beriau, Marie P., 1163; Bohlé, Rose M., 432; Brown, Anna Isabella, 989; Denis, Militime, 2329; Desmarais, Charlotte, 3217; Duclos, Veronique, 3672; Dufour, Obeline, 3855; Elie *dite* Breton, Julie, 1412; Farnam, Hannah C., 2825; Fortier, Marguerite, 811; Foy, Elizabeth, 21; Godreau, Luce, 3478; Gregory, Amelia H., 1333; Hardy *alias* Fullum, Marguerite, 432; Legaud *dite* Desloriers, Marie, 432; Leduc, Marie Adelaide Hermine, 989; Michel, Angélique, 3009; Pichet, Philomene, 989; Poirier, Euphrosine, 811; Rehicuril, Lydia Almeda, 2667; Reynolds, Eliza, 2745; Ricawy, T. V., 432; Roberts, Eliza, 1163; Talbot, Adèle, 3540; Thereau, Marcelline, 3009; Thivierge, Emerance, 2065; Turgeon, Seraphine, 2389; Vezina, Marie Donatilde, 731.

DISTRICTS OF BEAUCE AND MONTMAGNY.

By proclamation, dated 11th Feb., the periods of holding the terms of the Court of Queen's Bench in the District of Beauce, and of the Circuit Court for the County of Bellechasse, District of Montmagny, are fixed as follows:—Two Terms of the Queen's Bench at the parish of St. Joseph de la Beauce, beginning on the 20th June and October; and three terms of the Circuit Court for the County of Bellechasse, of five days each, at St. Michel from 20th to 24th March, from 28th June to 2nd July, and from 28th October to 1st November.

THE ADMINISTRATION OF JUSTICE.

Another letter from the Hon. Mr REDFIELD appears in the *American Law Register* for February, dated London, 10th November, the subject being, "The importance of judicial administration to the protection of the innocent, the punishment of the guilty, the defence of property and personal rights, and the just maintenance of constitutional government; with illustrations drawn from English constitutional history and the common law, as well as recent trials in Westminster Hall and other portions of the United Kingdom." Judge REDFIELD's letters, though evidently written in haste, are always interesting and instructive, and we therefore continue our transcript of them.

The last letter is as follows:—

The administration of justice, in all countries, and at all times, is a subject broad and difficult, both in its operation and its influence. It is perhaps more indicative, a truer test, of the real temper and spirit, both of the government and the people of the state or country, than any other one thing. This is especially true in regard to the admin-

istration of criminal justice, where the Court is called to hold the scale of justice impartially between the State and the accused; or, what is sometimes more difficult, between the government or different factions or parties, for the time holding the administrative functions of government, and the people at large. And this difficulty is greatly enhanced where offences against the government are concerned; especially in monarchical governments or states; and more so as those monarchies partake more of the absolute or despotic character. It may, then, well be supposed, that where the judge holds office at the mere will of the Sovereign, and is liable at any moment, upon the slightest occasion, or none at all, to be removed in disgrace, and thus have both the source of present support and future acquisition removed, in such cases it may well be supposed that the judge will almost necessarily merely echo the will or the desire of the Sovereign, and that justice will be very little regarded. Hence, very little fairness or purity is expected in countries under despotic rule, from the administration of justice, where the will of the Sovereign is placed in the scale against the rights, either of individuals or of the people at large. This is a proposition so obvious, as to meet no general denial or question. If any case occurs where fairness and firmness are exhibited in the courts of such a country, in opposition to the influence or the interests of the Sovereign, it will be the more admired and praised, but none the less regarded as exceptional, and not to be counted upon in the general estimate of consequences and results.

Now, this spirit, it must be remembered, is not peculiar to despotic governments, for it is natural, and almost necessary, that all governments and all parties having for the time the possession of administrative functions, should desire to have the courts favorably inclined towards themselves. And this being so, all governments and all governing parties will study to make and to keep the judicial administration favorable to their own views, and will consequently endeavor to frown down or put down all opposing views in the courts. This will be done in different countries and at different times in ways differing materially from each other; but in all cases with the same purpose of controlling and thus virtually corrupting the purity and independence of the judicial administration. And so far as we have observed, this is none the less true in republics than in monarchies. It is a thing to be expected everywhere alike. And it is not a thing which one can fairly consider as within certain reasonable limits. If we concede the same good faith to others which we all claim for ourselves, we must expect governments and parties, who believe in the soundness or the wisdom of their own policies, to labor to place themselves and their friends, and the doctrines and constructions for which they contend, upon the high vantage-ground of universal recognition and acceptance. To expect anything less would be to impeach either the good faith, the courage, or the zeal of the parties concerned.

Thus, it will occur in more despotic governments, as for centuries in the history of the British monarchy, and even at the present time in many European states, whose governments are, upon the whole, wisely and beneficially administered, that the judges will be removed or removable at the mere arbitrary will of the Sovereign. And equally, in such governments, the Sovereigns—as did the British monarchs, until the accession of William and Mary, after the Revolution of 1688—will claim and exercise, at will, the power to suspend the operation of any law, written or unwritten, so long as to them shall seem for the interest of the state. These are the usual prerogatives of arbitrary and despotic empires, without which they would cease to be such.

Now, it must be remembered that these defects in governmental, and especially judicial, administrators, are not peculiar to despotic empires or states, and certainly not confined to governments of any particular organization. The short experience of our own happy and prosperous country, whose government is free and popular, be-

yond all former precedent, is not without some lessons of loud admonition in this same direction. The courts, which at first were very generally modelled upon the independent structure and tenure of office of the English courts since the Revolution of 1688, have been gradually receding from that independent position, until, at the present day, there is scarcely one state in the Union where that character extends to all its judicial tribunals. In Massachusetts, for the security as well as the credit of that ancient and honorable commonwealth, the courts and the profession of the law have succeeded in pacifying the politicians and the legislature for the time being with the rather plausible theory that the Supreme Judicial Court, being the highest judicial tribunal in the state, is so embalmed or embedded in the constitution, that its soundness cannot be violated by any profane legislative hands. And this is all which could be saved from legislative demolition. And in order to secure even that last fortress of protection and defence against the rashness and delusions of popular prejudice, or passion, or fury of any kind, they have been compelled to adopt the suicidal policy of compromise by throwing a tub to the whale, as it has been sometimes called. In order to pacify the insatiable demands of popular ferment and political or legislative aspiration for advancement or progress, sometimes unjustly characterised as improvement, it has been found indispensable, even in this staid old commonwealth, to concede that all the inferior tribunals whose judges held office by the same permanent tenure, *dum bene se gesserint;* that all those inferior tribunals whose judges numbered ten times as many as those of the Supreme Judicial Court might be remodelled at the will of the legislature. And this has been literally accomplished within the last fifteen years, for no better object, in fact, than to change the names of the courts, and thus be enabled to appoint another set of judges, some of whom were younger men than their predecessors, and some were not; some of whom were better qualified to fill the places than those whom they succeeded, and some were not; but all were men in accord with the principles and the policies of the existing government.

Now, it must be conceded that, in thus volunteering to suggest that there is no difference in principle between the inferior and superior tribunals of a state, and that the Supreme Judicial Court of Massachusetts must put off its time-honored and venerable functions, and ere long consent to lie down in the same legislative sepulchre, thus prepared for all the subordinate tribunals of this noble old commonwealth, we feel not a little guilty of the offence of betraying our fellows, struggling manfully in the same honorable cause for the perpetuity of constitutional government. And we would fain hope there really may be more soundness in this, as it seems to us, rather shadowy distinction between the inviolability of the highest and the subordinate judicial tribunals of this commonwealth, than now occurs to us. But we all know that, in the neighboring state of New Hampshire, where the constitution, in regard to the tenure of the judicial office, is modelled carefully upon that of Massachusetts, the highest court in the state has had the same fate as all its subordinates, and has actually been remodelled by the legislature not less than three times within the memory of some now living, with no other purpose or pretence than to change the name of the court, and thus get rid of the judges. So that, in this state, where the tenure of office of the judges is, in terms, the same as in Massachusetts, or in England, *dum bene se gesserint*, the actual security from removal, upon any change in the ascendancy of political parties, is really less than in the neighboring state of Vermont, where the judges are elected annually by the legislature, and where, by immemorial usage, ripened into law, the judges are selected without reference to party, or political bias, and are continued indefinitely by a formal re-election, unless some cogent reasons exist, demanding

some change in regard to which all parties are agreed; thus showing very satisfactorily that the actual facility of change, in popular governments, sometimes actually conduces to the stability of the judiciary, while the opposite not unfrequently begets a popular distrust and uneasiness, not so much on account of existing evils, as of those apprehended in the future.

But having said so much in regard to the manifest disposition among the American states to reduce the tenure of judicial office to a brief term of years, and, in most cases, to subject it to the test of popular elections, we feel bound to add, that it has not seemed to us that this could fairly be laid to the account, chiefly, or to any considerable degree, of popular impulses or desires. The great mass of the people are, no doubt, deeply and vitally interested in having and maintaining, permanently, the ablest, most fearless, and independent judiciary which the wisdom of man can devise. Wherever the appointment and the action of the judiciary has been brought near enough to the people to have them properly appreciate its importance, it has always been found that a fearless and able judiciary was sufficiently safe in their hands. And although they do not readily volunteer to extend the term of judicial office, they are always content to let it remain where it is. It has always been found hitherto that movements in the different states, to limit the term or weaken the tenure of judicial office, have proceeded from those who hoped some time to obtain the position themselves, or who desired the places as political capital, to distribute among their followers, or else dreaded the opposition or the control of an independent judiciary, as an obstacle to legislative and other reforms in the municipal administration. With the exception of these three classes, there would never have been any difficulty in maintaining the perfectly independent tenure of judicial office in all those states where it was first adopted. The interests of a permanent judiciary have been betrayed by political demagogues and time-serving placemen, and not by the people at large.

And, sooner or later, it is obvious that the American States will have to consider the question of the indispensable necessity of an able and independent judiciary, in order to the proper maintenance of constitutional government. That was first secured after a struggle of many hundred years, in the British Government, at the period of the Revolution of 1688. And from that day to this it has proved the mightiest bulwark of the British constitutional Government. We do not here refer, of course, to any written constitution, for, aside from some few ancient charters, the Magna Charta, the Petition of Right, and the Bill of Rights, there is, as every student of the history of British constitutional law must know, no such thing as a written constitution in the British empire. But it is none the less a constitutional government, and one based upon well-settled and recognized principles, and principles lying at the very foundation of all the American constitutions. There is no guarantee of constitutional freedom in America which is not, as every well-read lawyer knows, extracted from the common law of our British ancestors. And one cannot enter the superior courts in Westminster Hall, or Lincoln's Inn, and not feel that the character and temper, the wisdom and forbearance of the English judiciary has very much to do with the quiet and order of this island.

Amid all the lawlessness and disturbance in this great Babel of cities (London), the largest, and really the least arbitrarily governed of any great city in the world, with the hundred other cities and large towns in Great Britain, what could be accomplished, with such universal freedom, and such unquestionable exemption from all arbitrary exercise of power, either by the general executive officers or the police of the towns and cities, except by a judicial administration, above all possible doubt or question, and one which the people felt to be their best friend and surest defence? What security exists for rights of property or person except in the judiciary? The legislature, in all times of disturbance, will be the first to propose the concession of part which is demanded, and thus by degrees yield the whole.

In a short visit to the Courts at Westminster Hall, for two days in succession, this fact was deeply impressed upon us. We there saw, indeed, men of ordinary human infirmity, with passions and prejudices, no doubt, such as fall to the common lot, sitting in their ancient places, which had come down from the creation of the Aula Regis, dating back almost to the period of the Norman Conquest; but men who felt the support of the prestige and the traditions of eight hundred years to back them—men who had all their lives witnessed the field at Runnymead, where the Magna Charta of English liberty was signed and sealed by King John and the English barons; who had looked upon, and read, and pondered the original instrument for fifty years; who knew every word of it, and all its commentaries and amendments by heart; and, above all, men who had imbibed, with their earliest mental culture, the sense of the soundness of British law, and the rights of British subjects; a thing to earn and settle which had cost centuries of toil, and treasure, and blood too; upon which no price could be placed by any man not base enough to become a slave himself.

With such men for judges, holding office beyond the limit of all earthly control, unless forfeited by crime, what temptation was there to know any man's person in judgment, or to feel any interest, or influence, beyond that of simple justice? It is impossible to witness an argument before any of the Courts in law, in Westminster Hall, and not feel that the judges, the counsel on both sides, and the parties, if present, which seldom is the case, as well as the bystanders, who are often very numerous, are all striving, consciously and quietly, towards one result, to find out, in the shortest way and time, the exact truth and justice of the case. So that, if the presiding judge, or, what is often the case, all the judges in succession, interpose ever so formidable objections, there is no fluttering among the counsel at meeting unexpected difficulties, and no feeling of disappointment among the judges at having objections satisfactorily and conclusively answered. There seems to be no pride of opinion among the judges, no unwillingness to yield a first impression, but rather, on the contrary, a feeling of satisfaction to have it corrected if it were wrong.

In short, one cannot spend an hour in one of these courts, and not feel that the courts are far more the courts of the people than of any other interest. Not that the interests of influential parties are any less regarded or respected than those of inferior standing; but from the natural presumption that the cases of parties of means and position will be likely to be more carefully investigated and thoroughly argued than those of persons who are less expensively represented, it will always become the duty of upright and impartial judges to look carefully to the protection of the rights and interests of those who have no one else to look after them. This was wonderfully illustrated in the late trials, under special commission, both at Manchester and Dublin. In both these cases the accused were arraigned for alleged crimes aimed most directly at the quiet and good order of society, in one case a treasonable conspiracy against the Government, extending through a very considerable number of disaffected persons, and, in the other, the deliberate assassination of one of the police, in open day, and in cold blood, for the avowed purpose of rescuing a prisoner in acknowledged lawful custody! But in all the trials, before both these commissions, the deliberation and watchfulness of the judges, to reach the exact truth in all the cases, was so marked and undisputed, that no prisoner was heard to utter the least complaint in regard to the fairness and justness of his trial. And in the case of those prisoners who chose not to be defended by counsel, the judges literally performed the constructive duty assigned by the common law of supplying the counsel for the prisoners, in making repeated suggestions to the prisoner to put questions favoring his defence. And then, the summing up of the judges, in all these cases, was so entirely fair and full, in bringing out all

the just grounds of defence on the part of the prisoners, that it was well characterized by some of the journals as "a summing up for an acquittal." And still, there was no attempt to impeach, or bring in question, on the part of any one, the entire propriety of this watchfulness of the judges to secure an impartial trial for all the prisoners. It seems to be comprehended here, that the only sure way to convict a guilty man before a jury, is to give him all possible chance of acquittal.

And, during the present week, in the Court of Common Pleas, before Lord Chief Justice Bovill and his associates, the hearing of a motion on the part of the somewhat notorious Miss Fray, was well calculated to test the patience and forbearance of the English bench in regard to troublesome suitors who choose to urge their own claims personally before the Court, and thus verify the maxim in regard to parties who become their own counsel. This lady had been long in controversy before the Court, all the time conducting her own case, until she was fairly thrown in the cause, and judgment was irrevocably given against her; when, instead of paying the same at once, she delayed until the *capias ad satisfaciendum* was placed in the hands of the sheriff's officer and she committed to prison, and then tendered the amount of the payment and less fees than were due to the solicitors. They naturally demanded the entire sum due, as every lawyer understands was their right. But Miss Fray, knowing nothing of the law on this point, which had been settled for fifty years, chose to argue the matter *de novo* as *res integra*, and on a motion for rule to strike the attorney's name off the roll, was very patiently heard to the end. And then, because the Court could not adopt her view, she threatened the Lord Chief Justice to bring the case before the Queen's Bench in error. All which was received with the utmost quiet and equanimity by his lordship, without the slightest attempt to be witty at the expense of the good lady, or once looking at the bar over his shoulder to learn whether they commiserated his melancholy condition. And the same, and more, might be said of the forbearing manner in which the somewhat famous Mrs. Yelverton was treated by the House of Lords a few months since in arguing an appeal in her own favor brought from the decree of the Court of Sessions in Scotland. Lord Cranworth, who presided at the trial in the absence of the Lord Chancellor Chelmsford, manifested a degree of indulgence almost calculated to encourage irregularity, not to use any more expressive language, which would be, perhaps, fairly justified by the wonderful pertinacity and want of accommodation manifested by the good lady during the trial.

We have extended this paper further than we intended, but not further than seemed needful to illustrate our point, that the more truly independent the judges are made, the more securely will the Courts become an asylum and a defence for the innocent, and the more willingly will the people acquiesce in the conviction and punishment of the guilty. And we desired, also, to bring prominently before the profession and the public the vital truth that the only reliable security for all property or personal rights and interests rests in an impartial and fearless administration of public and private justice; and that the just principles of free constitutional government, of which we are all so justly proud in America, cannot stand secure for all time upon any other basis.

NEW PUBLICATIONS.

AMERICAN LAW REVIEW. Boston.—The April number contains an interesting review of the "Life, Letters, and Speeches of Lord Plunket," besides the usual amount of original and compiled matter, to which we are indebted for several selections which appear in the present issue.

AMERICAN LAW REGISTER. Philadelphia.—The March number opens with an obituary notice of Professor AMOS DEAN, of the Law Department of Albany University, and one of the editors of the Magazine, who died suddenly on the 26th of January last.

STATUTES OF CANADA—31 VIC.

The Statutes of Canada, passed in the first part of the Session, have been issued in a separate volume. The Imperial Act for the union of Canada, Nova Scotia, and New Brunswick is prefixed to the volume, together with the Act for authorizing a guarantee of interest on the Intercolonial Railway Loan. Then follows the Imperial Act passed 20th August, 1867, to amend the Merchant Shipping Act of 1854.

The Acts passed in the first part of the first session of the first Parliament of Canada are twenty-one in number.

Cap. 1. An Act respecting the Statutes of Canada. This settles the form of the enacting clause, the interpretation to be given to various words and phrases, &c., the word "holiday" being made to include two new holidays, namely, Easter Monday and Ash Wednesday.

Cap. II. An Act respecting the office of Speaker of the House of Commons of the Dominion of Canada, provides that the Speaker leaving the Chair may call upon a member to act as Speaker during his absence.

Cap. III. An Act relating to the indemnity to members, and the salaries of the Speakers, of both Houses of Parliament.

Sec. 1 of this Act continues the ridiculous provision by which members of the Senate and of the House of Commons receive $6 per diem, if the Session does not extend beyond thirty days; but if the Session extends beyond thirty days, then each member is entitled to $600 for the Session. The practical effect of this grotesque enactment is that there never is nor ever will be a Session of less than 30 days, while desperate efforts are constantly made by the unscrupulous to split the business of every year into two Sessions.

Sec. 12 fixes the salaries of the Speakers of the two Houses at $3,200 each.

Cap. IV. An Act for granting Supplies, 1867-8.

Cap. V. An Act respecting the collection of the Revenue, &c.

Cap. VI. An Act respecting the Customs.

Cap. VII. An Act imposing Duties of Customs, with the Tariff of Duties payable under it.

Cap. VIII. An Act respecting the Inland Revenue.

Cap. IX. An Act to impose duties on Promissory Notes and Bills of Exchange. The duty on notes is, one cent on a note of $25; two cents from $25 to $50; three cents from $50 to $100; and over $100, three cents for each $100 or fraction of $100. The proper mode of cancelling the stamps is for the maker to write his initials on them; *or*, to write or stamp the date on them. It is not necessary to both initial and date.

Cap. X. An Act for the regulation of the Postal Service. This Act introduced several important changes, which are too well known to require repetition. The most salutary and liberal provision was the reduction of letter postage from five cents to three cents per half ounce.

Sections 62-75 provide for Post Office Savings Banks, which will pay four per cent interest to depositors. This makes the interest one cent per month on every three dollars. As no fraction of three dollars is taken into account, and neither the month of deposit nor the month of withdrawal, the calculation of interest becomes a very simple matter. It was proposed, we believe, to make these deposits *insaisissable* by garnishment, lest the department should be incommoded by attachments; but this iniquitous proposition failed to become law. Monthly statements of these deposits are to be published in the *Canada Gazette*, and will be looked for with much interest.

Cap. XI. An Act respecting Banks. Sec. 17 provides that no Bank shall, after the passing of this Act, incur any penalty or forfeiture for usury; and any Bank may stipulate for, take, reserve or exact any rate of interest or discount not exceeding seven per centum per annum, and may receive and take in advance any such rate, but no higher rate of interest shall be recoverable by any Bank.

Cap. XII. An Act respecting the Public Works of Canada.

Cap. XIII. An Act respecting the construction of "The Intercolonial Railway."

Sec. 1. Railway to connect the Port of Rivière du Loup with line of Railway leading from city of Halifax, at or near the town of Truro. Sec. 3. Construction of Railway to be under charge of four commissioners.

Sec. 27. Loan, with Imperial guarantee, for construction of road, to the extent of £3,000,000 sterling. Sec. 32. Government of Canada empowered to raise, by loan, without imperial guarantee, the further sum of £1,000,000 sterling.

Cap, XIV. An Act to protect the inhabitants of Canada against lawless aggressions from subjects of Foreign Countries at peace with Her Majesty.

Cap. XV. An Act to prevent the unlawful training of persons to the use of arms.

Cap. XVI. An Act to authorize the apprehension and detention of such persons as shall be suspected of committing acts of hostility or conspiring against Her Majesty's person and Government.

Cap. XVII. An Act for the settlement of the affairs of the Bank of Upper Canada.

Cap. XVIII. An Act to authorize the amalgamation of the Commercial Bank of Canada with any other Bank, &c.

Cap. XIX. An Act to amend "The Grand Trunk Arrangements Act, 1862," and for other purposes.

Cap. XX. An Act to incorporate the St. Lawrence and Ottawa Railway Company.

Cap. XXI. An Act to amend Acts incorporating and relating to the Canadian Inland Steam Navigation Company, and to change its corporate name to that of the Canadian Navigation Company, and for other purposes.

JUDICIAL CHANGES IN GREAT BRITAIN.

The number of changes in the English Judiciary has been unusually large during the last two years, and several important appointments have been made within the last few months.

Early in the year, Sir John Rolt, who was recently appointed one of the two Lords Justices of Appeal in Chancery, in the place of Lord Justice Turner, deceased, was attacked by paralysis. It was at first stated that mind and memory were not affected by the attack, and that Lord Justice Rolt would be able, after a brief interval of repose, to resume his judicial labors. But in view of the large amount of business before the Court, which would not admit of delay, Lord Justice Rolt thought proper to place his resignation in the hands of the Government. Sir John Rolt was an able Chancery lawyer, and during the short time he occupied a seat on the bench, fulfilled the high expectations which had been formed of his judicial ability.

Sir Charles Jasper Selwyn, the Solicitor-General, succeeded Sir John Rolt. This appointment has not received the commendation usually bestowed on judicial appointments in Great Britain. A leading journal speaks of him as "without judicial experience, with very moderate learning, and with no high capacity of any kind." He was born in 1813, called to the bar in 1840, received his silk gown in 1859, and has held the office of Solicitor-General a little over half a year. The recent statute which empowers one Lord Justice to sit alone in hearing appeals, renders this appointment the more unfit. The *Law Times* says: "The result must be palpably ridiculous, if Sir Charles Selwyn, sitting alone, is to have power to reverse the decisions of the learned Vice-Chancellors and the Master of the Rolls, all of whom, we may say without disrespect, are more eminent and capable lawyers than himself." The vacant place was offered to Sir Roundell Palmer, but was declined, as he is certain, on the coming in of a Liberal Ministry, to be made Lord Chancellor, and is unwilling at present to leave his enormous practice at the bar.

Mr. William Baliol Brett, Q.C., succeeds Sir Charles Selwyn as Solicitor-General. He was a member of the Common Law bar, as was also the present Attorney-General,

Sir J. B. Karslake. It has been usual, of late years, to take one of the law-officers of the Crown from the Chancery, and one from the Common Law bar. Mr. Brett was born in 1817, was called to the bar in 1846, and appointed Qeeen's Counsel in 1860.

Lord Chelmsford has resigned the Lord Chancellorship, and is succeeded by Lord Cairns, who was appointed one of the Lords Justices of Appeal in Chancery, on the resignation of Sir James L. Knight Bruce. During the short time that Lord Cairns has been on the bench, he has displayed the highest judicial capacity, and bids fair to become one of the greatest Equity judges of modern times.

The place vacated by Lord Justice Cairns' elevation to the woolsack has been filled by the promotion of Sir William Page Wood, who has for many years been one of the Vice-Chancellors. Lord Justice Wood has had great experience as an Equity judge, and his appointment has given general satisfaction. Mr. Giffard, Q.C., a leading member of the Chancery Bar, succeeds to the vacant Vice-Chancellorship.

Sir William Shee, one of the puisné judges of the Queen's Bench since 1864, died on the 20th of February, after a very short illness. This event has caused universal and profound regret throughout the profession in England. The *Law Times* speaks of "the prominent position this eminent man had held at the bar for such a number of years, the intense popularity which his many admirable qualities had won for him in a profession generally so hypercritical, and the importance of his appointment as a vindication of the profession from any narrow-minded feelings of religious bigotry." Mr. Justice Shee was a Roman Catholic. He was born in 1804, and was called to the bar in 1828. The *Law Times* says: "He joined the Surrey sessions; and both there and on circuit his business increased with unusual rapidity, so much so that he obtained the coif when of only twelve years' standing. While still in the outer ranks, he had won a high reputation for eloquence and those other qualities which make a successful leader, more particularly by the manner in which he conducted a case which at the time excited a great deal of attention, and which is usually spoken of as 'Joe Punter's case.' Punter was a cottager on the property of Lord Grantley, whose cottage had been pulled down, and who sued his Lordship for trespass *in formâ pauperis*. Mr. Shee being his counsel, a verdict was found for the plaintiff for £50. A new trial was granted on the ground of the verdict being against evidence. Mr. Shee again appeared for Joe Punter; a second time the jury found for the plaintiff, this time for £100 damages. A new trial was again obtained, and in the third trial a crowning proof was given of the power and brilliancy of Mr. Shee's advocacy, by the jury finding a verdict for £150. The Court above, on another application for a rule, refused it, and they said they did so in mercy to the defendant. It is needless to trace Mr. Shee's subsequent professional triumphs; his manly bearing, his high character for unblemished integrity, his fascinating manner, but, above all, his eloquence, insured for him a large practice and distinguished position, and left him, after the advancement of Thesiger and Cockburn to the bench, undoubtedly the most prominent figure at the English bar. His name is identified with all the *causes celèbres* of modern times,—the *Hudson* v. *Slade* case, the *Bewicke*, the *Palmer*, the *Roupell* cases, and a host of others, that at this moment we cannot recollect. In the year in which he obtained the coif, he had greatly increased his reputation as a lawyer by his publication of an edition of Lord Tenterden's book on Shipping, another edition of which he brought out only last year; also by his edition of Marshall on Marine Insurance. It was on his own circuit that Sergeant Shee was in his glory. He was there the idol of all; and as leader he exercised a sway such as no man had ever done before, or probably will again, founded both on affection and respect. As a peacemaker among many elements often discordant, he shone conspicuously. His

genial and irresistible influence healed every dispute, and put an end to every contention. Few who have been at the Home Circuit Mess will easily forget the happy and graceful speeches, so characterized by good taste and genuine feeling, of Sergeant Shee; his kind encouragement given to the young and timid; and the genuine, friendly tone, adopted by him to all, so free from affectation of self-assertion. So long employed in cases where able advocacy rather than an acute knowledge of legal technicalities was required, in the calm atmosphere of the judicial bench, Sergeant Shee was not in his element, and failed to prove as effective a judge as many men of much less note."

Mr. Justice Shee's successor is Mr. James Hannen. Mr. Hannen is a Liberal in politics, but his nomination seems to meet with the approval of all parties. The *Law Times*, which is of decidedly Conservative leanings, closes an article in which it speaks of the new judge "as an excellent lawyer and a very accomplished man," by saying: "It is rarely we have had as gratifying a task as to address, on behalf of the profession, these few words of welcome to Mr. Justice Hannen."

The last appointment we have to notice is that of Mr. T. D. Archibald, of the Home Circuit, to succeed Mr. Hannen, in the office of Junior Counsel to the Crown, or, as it is vulgarly called, "the Attorney General's Devil."

RECENT ENGLISH DECISIONS.

Appeal. 1.—The Queen in Council has jurisdiction of an appeal from the colonies in criminal as well as in civil cases; but, in a criminal case, an appeal will be granted only under special circumstances. *Regina* v. *Bertrand*, Law Rep. 1 P. C. 520.

2. Leave to appeal from a conviction of a colonial court for a misdemeanor having been granted, subject to the question of the jurisdiction of the Privy Council to entertain the appeal, and it appearing that since such leave the appellant had received a free pardon, the Judicial Committee of the Privy Council declined to enter upon the case, and dismissed the appeal. *Levien* v. *Regina*, Law Rep. 1 P. C. 536.

Award.—A statute directs that an arbitrator shall make his award within a certain time after he "shall have entered on the reference." *Held*, that an arbitrator enters on a reference, not when he accepts the office, or gives notice of his intention to proceed, but when he enters into the matter of the reference, either with parties before him or *ex parte*. *Baker* v. *Stephens*, Law Rep. 2 Q. B. 523.

Bill of Lading.—A *bona fide* assignee for value of a bill of lading is entitled to the goods named therein, if he had no notice of fraud or insolvency in the person assigning to him, and if such person had authority to transfer the bill of lading. *The Argentine*, Law Rep. 1 Adm. and Ecc. 370.

Champerty.—The plaintiff agreed to share with a solicitor the profits arising from the successful prosecution of a suit to establish his title to property, on being indemnified against the costs. *Held*, that though the contract amounted to champerty and maintenance, yet the plaintiff was not disqualified from suing, since his title was vested in him, before the illegal contract. A decree was made in his favor, but without costs. *Hilton* v. *Woods*, Law Rep. 4 Eq. 432.

Collision.—1. When a collision takes place in which both vessels are to blame, the master and crew of one cannot sue for salvage for having saved the cargo of the other from perils resulting from the collision. *Cargo ex Capella*, Law Rep. 1 Adm. and Ecc. 356.

2. If the crew of a ship have contributed to a collision by not keeping a sufficient look out, though the pilot is also to blame, yet the owners are liable. *The Velasquez*, Law Rep. 1 P. C. 494.

Confession.—The prisoner's master called him up, and said, "You are in the presence of two police officers, and I should advise you, that, to any question put to you, you will answer truthfully, so that, if

you have committed a fault, you may not add to it by stating what is untrue." He afterwards added, "Take care; we know more than you think." *Held*, that a statement then made by the prisoner was admissible against him on his trial for larceny. *Regina* v. *Jarvis*, Law Rep. 1 C. C. 96. (*Note.*—This question of the propriety of admitting proof of confessions made on solicitation, has repeatedly come up during the present term of the Court of Queen's Bench at Montreal. It seems to us that Mr. Justice Drummond's decisions have carried the rejection of such testimony somewhat farther than the above ruling at least would warrant.—ED.)

Directors.—1. Where a person who has been drawn into a contract to purchase shares by the fraudulent misrepresentations of directors, brings a suit to rescind the contract, the misrepresentations are imputable to the company. But if such person, instead of seeking to set aside the contract, sues for damages for deceit, he can maintain such action only against the directors, and not against the company. *Western Bank of Scotland* v. *Addie*, Law Rep. 1 H. L. Sc. 145.

2. If the articles of a company do not prescribe how many directors shall be a quorum, the number who usually act in conducting the business will be a quorum. A forfeiture of shares by two out of six directors held valid. *Lyster's Case*, Law Rep. 4 Eq. 233.

Evidence.—1. The prisoner, an attorney, was indicted for perjury, in having sworn that there was no draft of a certain paper made by his client. No notice to produce the draft had been given to the prisoner; and, on the trial, it was proved to have been last seen in his possession. *Held*, that secondary evidence of its contents was inadmissible. *Regina* v. *Elworthy*, Law Rep. 1 C. C. 103.

2. On a trial for felony in a colony, the jury disagreed; on a new trial, some of the witnesses having been resworn, their evidence on the former trial was read to them from the judge's notes, both the prosecution and the prisoner having liberty to examine and cross examine. *Semble*, that this was irregular, and could not be cured by the prisoner's consent. *Regina* v. *Bertrand*, Law Rep. 1 P. C. 520. (*Note.*—This case reminds us of a communication made to us last April, which has been overlooked. We were informed that in the case of Thomas Wilson, tried for murder at Caughnawaga, in the Court of Queen's Bench at Montreal, the jury, on the 23rd of April, had to be discharged in consequence of the serious illness of one of their number. A new jury being sworn in, the evidence already given was read to the jury from the judge's notes, the witnesses being resworn, and in attendance. This appeared to us at the time a serious innovation, and the Privy Council have decided its illegality.—ED.)

Indictment. — An indictment, charging the prisoner with neglect to provide food and clothing for his child, sufficiently avers his ability to provide, it being implied in the word "neglect." *Regina* v. *Ryland*, Law Rep. 1 C. C. 99.

Insanity.—If disease be once shown to exist in the mind of a testator, it matters not that it is discoverable only when the mind is addressed to a certain subject, to the exclusion of all others, or that the subject on which it is manifested has no connection with the testamentary disposition; and if a diseased state of mind is proved to have once existed, the burden of proving restored health lies on those who assert it. The question of insanity is a mixed one, within the range partly of common observation, and partly of special medical experience; and the Court, in searching for a conclusion, must inform itself of the general results of medical observation, and must make a comparison between the sayings and doings of the testator at a time when the disease is alleged to exist, and (1) his sayings and doings at a time when he was sane, or the sayings and doings of those persons whose general temperament and character bear the closest resemblance to his own, and (2) the sayings and doings of insane persons. *Smith* v. *Tebbitt*, Law Rep. 1 P. & D. 398.

Malicious Prosecution.—No action lies for a malicious prosecution unless the prosecution has failed, even though the plaintiff has been convicted under a statute giving no appeal. *Basebé* v. *Matthews*, Law Rep. 2 C. P. 684.

Marriage.—In Scotland, a connection commencing in adultery may become, on the parties becoming at liberty to marry, matrimonial by consent, and habit and repute are evidence of such consent. *The Breadalbane Case*, Law Rep. 1 H. L. Sc. 182.

Master and Servant.—An action will lie for enticing away the plaintiff's servant, his daughter, though it be not alleged that the defendant debauched her, or that there was any binding contract of service between her and the plaintiff. The plaintiff's daughter, nineteen years old, resided with him, and assisted him in his business. By a fictitious letter, dictated by the defendant, she procured her mother's consent to leave home for a few days, when she left, and the defendant took her to a lodging-house, where he cohabited with her for nine days. She then returned home. *Held*, that there was a sufficient continuing relation of master and servant, and sufficient evidence of an enticing away, to maintain the action. *Evans* v. *Walton*, Law Rep. 2 C. P. 615.

New Trial.—The Court cannot grant a new trial, on the application of the prisoner, in a case of felony. *Regina* v. *Bertrand*, Law Rep. 1 P. C. 520.

PROVINCE OF QUEBEC.

COURT OF QUEEN'S BENCH.

CROWN SIDE.

THE QUEEN *V.* ROBERT NOTMAN.

MONTREAL, APRIL 22ND, 1868.

Criminal Law—Statements by Jury.

Held, that a statement made by the jury previous to giving a verdict, that a newspaper had been handed to them, cannot be recorded on the register of the Court.

The prisoner, Robert Notman, was tried on an indictment charging him in substance with having procured, counselled, and commanded one Alfred Patton to administer a certain noxious thing (ergot of rye) to Margaret Galbraith, to procure miscarriage. The jury having retired to consider their verdict, came into Court at five o'clock and asked for further explanation of the indictment, as they thought, from the statement contained in a copy of the *Herald* newspaper submitted to them, that the prisoner was indicted for actually administering the noxious thing.

The copy of the newspaper had reached them in this way: Certain letters written by the prisoner, which had been proved at the trial, had been printed in the newspaper, and the presiding judge having found that they were correctly printed, directed the Deputy-Clerk of the Crown to allow the jury to refer to the printed version. The Deputy-Clerk of the Crown, however, by inadvertence, permitted the jury to take into their room the entire newspaper, which also contained a report of the evidence.

Mr. Justice Drummond expressed his regret at the inadvertence, and instructed the jury as to the nature of the indictment. The jury having retired, the counsel for prisoner, Messrs. Devlin and Kerr, requested the Court to direct the statement of the jury respecting the newspaper to be recorded on the minutes.

DRUMMOND, J. No such thing was ever known in England or here as to record statements made by the jury. The application is refused.

The jury having come into Court again with a verdict of *Guilty*, the prisoner's counsel renewed their application.

Devlin. How can we bring the matter up again, or obtain the opinion of other judges, unless the statement of the jury be recorded on the minutes?

DRUMMOND, J. That is for you to consider. The Court rejects the application.

SUMMARY OF RECENT DECISIONS.

Admiralty.—When a collision occurs, in consequence of deficiency of look-out and management on board, and not solely from

any fault or neglect of the pilot in charge, the owner of the vessel in fault cannot claim exemption from liability for the damage caused by the collision, on the ground that he was compelled to have a pilot on board. *The Secret*, V. A. C. 11 L. C. J. 294.

Appeal.—An appeal made within eight days from the rendering of a judgment which is subject to revision, is premature. *Beaulieu* v. *Charlton*, 11 L. C. J. 297.

Costs.—Where an action by a foreign plaintiff has been dismissed for want of security for costs, a second action for the same cause of debt will be suspended until the costs of the first action are paid. *Dunlop* v. *Jones*, 11 L. C. J. 316.

Distribution. — Hypothecary creditors must be collocated merely on the net proceeds arising from the specific properties hypothecated in their favor. *In re* Lariviere, 11 L. C. J. 265.

Evidence.—The evidence of a witness may be contradicted by proving by another witness certain statements made by him in a conversation, with respect to which conversation he himself had not been interrogated. *Methot* v. *Lalonde*, 11 L. C. J. 301.

Hypotheque.—A *hypotheque* acquired on the property of a non-trading debtor, whilst *en état de déconfiture*, is valid, in the absence of fraud.. *McConnell* v. *Dixon*, 11 L. C. J. 300.

Lease.—Where a lease has been continued for one year by *tacite reconduction*, no notice is necessary to terminate the lease thus continued, and the same legally expires at the end of the year. *Laflamme* v. *Fennell*, 11 L. C. J. 288.

Marriage. 1. A marriage between two Roman Catholics will not be annulled for cause of *impuissance*, until after the sacrament of marriage has been annulled by ecclesiastical authority. *Lussier* v. *Archambault*, 11 L. C. J. 53.

2. A marriage between two Roman Catholics will not be annulled until after the sacrament of marriage has been annulled by ecclesiastical authority. *Vaillancourt* v. *Lafontaine*, 11 L. C. J. 305.

Bail-Bond.—After the expiration of the delay of one month accorded for the surrender of a defendant by his Bail, under a bond in terms of sec. 11 of ch. 87 C. S. L. C., the liability of the Bail to pay the plaintiff's debt becomes absolute. *Lynch* v. *Macfarlane*, 12 L. C. J. 1.

Recusation of Judge.—The plaintiff had instituted at St. Hyacinthe ten actions *qui tam* against persons who were alleged to be associated in partnership for the construction of a bridge at St. Hyacinthe, and who had traded, without filing the necessary declaration of co-partnership. Mr. Justice Sicotte, the sole judge at St. Hyacinthe, filed a statement in the record to the effect that he had been one of the partners or proprietors, but had ceased to be so in 1855. *Held*, that this declaration did not justify the recusation of the judge. *Leclerc* v. *Bilodeau*, 12 L. C. J. 20.

Capias.—The defendant was arrested at the instance of the plaintiff, under a warrant of arrest, issued by a Commissioner for taking affidavits to be used in the Superior Court, and which empowered the gaoler to detain the defendant "for forty-eight hours and no longer, unless before the expiration of that time a writ of *capias ad respondendum* be duly served upon him." No writ of *capias* was served within the forty-eight hours, but the defendant was detained for two days longer, when the writ of *capias* issued in this cause was served upon him in gaol. *Held*, that the detention of the defendant after the expiration of the period of forty-eight hours was illegal, and that the arrest made under the writ of *capias* while the defendant was so illegally detained, was void, and the defendant was discharged from custody, upon his petition to that effect. *Hingston* v. *McKenty*, 12 L. C. J. 25.

Evidence.—Copies of the depositions of witnesses examined in another cause may be filed in a cause proceeding at *enquête*, for the purpose of discrediting a witness examined therein. *O'Connor* v. *Brown*, 12 L. C. J. 28.

RECENT AMERICAN DECISIONS.

Contract by Telegraph.—Where parties residing at a distance from each other

agree to communicate by telegraph in their business transactions, the same rules apply in determining whether a contract has been made, as in cases of communications by letter. Therefore an offer accepted by telegraph constitutes a contract, although the party making the offer attempts to revoke it before his receipt of the acceptance. An acceptance by letter of an offer is sufficient to make a contract, not by virtue of being sent through the public mail, but because it is an overt act, manifesting the intention of the acceptor, and thus making the *aggregatio mentium*, which is the essence of a contract. *Trevor* v. *Wood*, 7 Am. Law Register, 215.

Navigation.—The fact that one vessel carries a prohibited light does not absolve another from the observance of the caution and nautical skill required by the exigences of the case. Although a white light usually represents a vessel at anchor, an omission to watch the light and ascertain from its bearings whether the vessel is in motion, is a neglect of ordinary care and skill, and makes the collision the result of mutual fault. There may be circumstances under which a vessel that is unable to show the proper lights may nevertheless continue her voyage at night. *Greening* v. *Schooner Grey Eagle*, 7 Am. Law Register, 226.

Signature by Mark.—A note signed by a mark may be valid against the signer, though there be no subscribing witness. *Willoughby* v. *Moulton*, Sup. Ct., N. H.

What is a Note?—A promissory note or bill, to come within the rules for the protection of the holders of mercantile paper, must be payable absolutely at some period, not depending on a contingency, nor payable out of a particular fund. *Skillen* v. *Richmond*, 48 Barb.

Railroad Company — Negligence. — It is negligence for a passenger on a railroad train to put his arm out of the car window; and if the facts are undisputed that the injury resulted from this cause, the Court should pronounce it negligence as a matter of law. There may be qualifying circumstances in the condition of the passenger which would make special care the duty of the carrier, but such facts should be proved as part of the case. *Pittsburgh and Connellsville Railroad Company* v. *McClurg*, 7 Am. L. R. 277. (The action in this case was brought by a passenger whose arm was injured while he was sitting in the car with his elbow protruding beyond the window sill. Chief Justice Thompson, in giving judgment, reasoned thus: "A passenger, on entering a railroad car, is to be presumed to know the use of a seat, and the use of a window; that the former is to sit in, and the latter is to admit light and air. Each has its separate use. The seat he may occupy in any way most comfortable to himself. The window he has a right to enjoy, but not to occupy. Its use is for the benefit of all, not for the comfort alone of him who has by accident got nearest to it. If, therefore, he sit with his elbow in it, he does so without authority, and if he allows it to protrude out of it, and is injured, is this due care on his part? He was not put there by the carrier, nor invited to go there; nor misled in regard to the fact that it is not part of his seat, nor that its purposes were not exclusively to admit light and air for the benefit of all. His position is, therefore, without authority. His negligence consists in putting his limbs where they ought not to be, and liable to be broken, without his ability to know whether there is danger or not approaching.")

Landlord and Tenant.—Where the landlord and owner of the premises in fee, claiming that the term has expired, enters without process and without force, during the temporary absence of the tenant, the latter has no right to take the law into his own hands, and attempt to dislodge the former by force. The landlord, being in the actual possession, has a right to maintain it, and to use force, if necessary, for that purpose. *Sage* v. *Harpending*, 49 Barb.

Statute of Limitations—Commencement of Suits.—A suit is to be regarded as commenced so as to avoid the Statute of Limitations, when the writ is completed with the

purpose of making immediate service. *Mason* v. *Cheney*, Sup. Ct., N. H.

Contract—Singular Suit.—Peres was preacher and teacher in a synagogue, under an entire contract. But he kept a shop on Saturday, and his congregation dismissed him: whereupon he sued for his salary during the entire term. *Held*, that these facts, if proved, justified the dismissal; but that evidence of the testimony before the Church was not admissible, without the production of the witnesses.—*Children of Israel* v. *Peres*, 2 Coldwell, 620.

Railroad.—A party whose cattle, without fault on his part, escape from his enclosure, and wander on to a railroad track, and are there killed by alleged carelessness in not slackening the speed of the locomotive, cannot recover for the loss from the railroad company. *Price* v. *N. J. R R.*, 30 N. J. 229.

Rights of Mortgagee of Stock.—The case of Langton *v.* Waite, in which Vice-Chancellor Malins gave judgment last Saturday, is another case of considerable moment to the dealers and speculators in stocks and shares. Disencumbered of details, the facts were, briefly, that the plaintiff, through his brokers, mortgaged a quantity of Grand Trunk Canada Railway Stock to the defendants, who were stock brokers, for a three months' loan. During the interval the defendants sold the stock, and the price having fallen at the end of the three months, realized a profit of about £3,000. The plaintiff claimed that the defendants must account to him for the proceeds of this sale. The defence was: firstly, that there was no privity between the plaintiff and the defendants; this objection was clearly untenable; and, secondly, that by the rules of the Stock Exchange, the holders of stock can deal with it as they please. Upon this point there was a conflict of evidence. The Vice-Chancellor concluded there was no such usage, nor do we see how there could be a usage so one-sided in its operation. And he held, finally, assisting himself by the decision in *ex parte* Denison (3 Ves. 552), that the mortgagees must account to the plaintiffs for the amount received for the stock—*Solicitor's Journal.*

Digest of English Law Commission.—The following letter has recently been forwarded to the several Inns of Court, by Mr. Godfrey Lushington, the Secretary to the Commission:—

"Digest of Law Commission,
"Lincoln's Inn, 22nd Nov., 1867.

"Sir,—I am directed by H. M.'s Commissioners for inquiring respecting a Digest of Law to state to you, for the information of the Benchers, that the Commissioners, in their first report to the Queen, gave it as their opinion, that a Digest of Law is expedient, and recommended that a portion of the Digest, sufficient in extent to be a fair specimen of the whole, should be in the first instance prepared, which specimen, they submitted, might be conveniently executed under their superintendence. The Commissioners now propose, with the authority of H. M.'s Government, to proceed with the preparation of specimen Digests, such as they have recommended, of certain portions of the law. The subjects they have selected for this purpose are the following:—

(1) Bills of Exchange, including Promissory Notes, Bank Notes, and Cheques.

(2) Mortgage, including Lien.

(3) Rights of Way, Water and Light, and other Easements and Servitudes.

"The Commissioners are desirous to obtain for this undertaking the co-operation of the Bar, and they accordingly propose to intrust the preparation of a specimen Digest of the Law under each of these heads to a gentleman of the Bar, to be selected by them, with liberty to him to associate with himself another member of the Bar, to be nominated by him, and approved of by the Commissioners. The gentlemen selected will be required to execute the several specimens in conformity with the views expressed in the Commissioners' First Report, and their work

will be subject to the general superintendence of the Commissioners. The specimens, when completed and approved of by the Commissioners, will be reported to Her Majesty, with the names of the gentlemen by whom they have been executed.

"With regard to remuneration, the Commissioners do not consider themselves to be as yet in a position to determine on the amount; and they think that, on the whole, the most acceptable course to the profession will be, that the sum to be paid for the preparation of each specimen should be fixed, after its execution, by a committee of three of the Commissioners; for which purpose the Commissioners propose to nominate their Chairman (Lord Cranworth), Sir James Wilde, and Mr Reilly. The Commissioners, then, with a view to their guidance in the selection of gentlemen for this purpose, suggest that any member of the Bar, willing to undertake the preparation of one of the specimen Digests, should, on or before the last day of Hilary Term next, send in to the Commissioners a statement of such his willingness, accompanied with,—

(1) A general summary, in an analytical form, of the whole matter of the law comprised under the head chosen by him.

(2) A small subdivision of the same worked out in detail, as an example of the mode in which he would propose to fill up the outline furnished by his analytical summary.

(3) Any general observations he may think relevant respecting the execution either of the portion of the Digest that will embrace the particular subject chosen by him, or of the Digest generally.

"The Commissioners would not object to more than one gentleman combining in executing one of the specimens, and accordingly joining in preparing and sending in the papers indicated. GODFREY LUSHINGTON, Secretary."

HEAVY COSTS.—What may be called an astounding compensation case cropped up in the Queen's Bench on Thursday. The arbitration had reference to damage to a bridge belonging to a company. The umpire awarded £100. The costs were £3000, of which the umpire received £600.

NEW YORK CODE.—Some time ago we printed some parts of this code, which appeared to us to be admirable. We have since had occasion to look into it more closely, with the especial object of seeing how its authors treated one of the subjects set by the Commissioners in England for specimen digests, viz., Easements. We were amazed: the brevity of the digest is simply ludicrous. A subject to which Gale devoted an erudite treatise (which is now entering a fourth edition), and to which, moreover, Dr. Washburn, an American writer, has given his very careful and learned attention in a far larger work than Gale's, which has just been published, is disposed of in the New York code in a few paragraphs. For practical purposes it is useless,—it is a mere bite out of a colossal fruit. As a guide to those inclined to compete for the honor of framing specimen digests of English law, it affords no assistance; indeed, it is rather discouraging, as showing how great must be the labor, how acute the intellectual vigor, which shall reduce a branch of law to a set of propositions capable of invariable and rapid application.—*Law Times.*

LORD WENSLEYDALE.—Perhaps no English lawyer, as a lawyer, has had so extended a reputation in America of late years as Lord Wensleydale, better known as Mr. Baron Parke, whose death, in his eighty-sixth year, has recently been announced. James Parke was born in March, 1782, and was called to the bar in 1813. He was never made King's counsel, but in 1828 succeeded Mr. Justice Holroyd in the Court of King's Bench. Six years later he was transferred to the Court of Exchequer, where he sat for 22 years. The opinions delivered by him in that Court run through thirty volumes of reports, from the second of Crompton and Meeson to the last of Exchequer. During almost the entire period, he was the senior puisne baron; and throughout the whole 22 years, his distinguished associate, Mr. Baron Alderson, had a seat on the bench beside him.

In 1856, Mr. Justice Parke received a peerage for his own life only. This important innovation, which threatened to work a revolution in the constitution of the Upper House was stoutly resisted by the Peers, who denied the power of the Crown to create a life peerage; and Lord Wensleydale was finally granted a patent to himself and the heirs of his body, in the usual form. As he leaves, however, no son, the title becomes extinct.

LORD BROUGHAM.—There is a curious litigation now proceeding in reference to the memoirs of the venerable Lord Brougham, which has equal interest for the legal and and the literary worlds. It appears, from the allegations in the bill, that Lord Brougham has been engaged for many years in preparing for publication elaborate "Memoirs of his Life and Times," including his correspondence with almost all of his distinguished contemporaries. He had employed Dr. Cauvin to assist him in the revision of his vast accumulation of documents, a quantity of which had been intrusted to the Doctor for that purpose, and it was to recover these that the suit had been commenced. The defendant, Dr. Cauvin, had been recommended to Lord Brougham by Mr. Henry Reeve, and Mr. John Forster; and besides the manuscripts entrusted to him, he was occupied in the arrangement of other papers at Brougham Hall. It was understood that the Doctor was to act only as selecter and corrector, not to write any part of the work nor to put his name upon the title page. This was in 1866. Dr. Cauvin continued his task, in constant communication with Mr. William Brougham, who acted for his brother; and then on his invitation he went to Brougham Hall, where he remained for two months, busily engaged in researches, returning to London in October, and carrying with him a large quantity of original letters and copies. Before he left, he agreed with Mr. W. Brougham to arrange the first volume within a month, for the inspection of Mr. Forster, who, after revising it, was to forward it to Lord Brougham, at Cannes. This volume was to be published early in the spring of the present year, and then Dr. Cauvin was to proceed forthwith to prepare the second volume. During this time no agreement had been made for remuneration. In December, Dr. Cauvin requested a check for £200 or £300 on account. Mr. Brougham declined to advance so large a sum, but offered to pay on account a sum that would bear a fair proportion of the work done to the whole work, and asked for the Doctor's estimate of his services. The Doctor named it at a thousand guineas. This was objected to by Mr. Brougham, who demanded the papers in Dr. Cauvin's possession, which were refused, pending the dispute about the claim, and it is to recover these papers that appeal is made to the Court of Chancery.

The question is, whether the demand is fair and reasonable. Mr. Forster, than whom no man is more competent to advise, says that it is not so, and that at such a sum the book would yield no profit. The defendant says that he already given to the work an entire year, and that he has read more than 30,000 letters. The amount of remuneration to which he is entitled is a question for a court of law. Can a court of equity compel him to give up the papers before this is determined, and, if so, upon what terms? Perhaps, on paying the amount claimed into court to abide the result.—*The Law Times.*

A story that reads like a chapter of romance was told to the registrar of the Chelmsford County Court on Saturday last. A young girl of eighteen appeared before him on her own petition to be adjudicated a bankrupt. She owed £40 to the Crown, the amount of a recognizance she had forfeited by neglecting to appear at the Central Criminal Court against a man who had attempted to murder her. This man, named Watkins, seduced her, and about a year ago attempted to stab her to death at Buckhurst-hill, where she then lived with her father. Though she had neglected to prosecute him on his trial, her first depositions were taken as evidence, and he was sentenced to twenty years' penal servitude. During the trial she had been

under the care of his father, a jeweller in London, and had been sent abroad. On her return, she was apprehended for her debt to the Crown, and seems to have found no protector, her own father being too poor to release her. As she was not a trader, the registrar said he could not deal with her case at present, and she would have to remain in jail till March next, when he would see what could be done.—*Law Times.*

German Law. — The following judicial anecdote, the scene of which lies in Germany, illustrates very ludicrously the matter of fact and methodical nature of the Teutonic mind, as well as its severe adherence to logic. A complaint was made to a magistrate that a blow had been given in the course of an altercatien, but the witness who was relied on to prove the assault could only say that he heard the blow given, as he was at the time in a certain inn near which the occurrence had taken place. The defendant, who denied giving the blow, urged that it was impossible, even if it had been given, that the witness could have heard it from where he was. The magistrate resolved to try the point by actual experiment, and proceeded to the inn, while an officer of the court accompanied the complainant to the precise spot where the quarrel had occurred, and there and then gave him a good, sound whack. The magistrate, on resuming his seat in court, said he heard the blow perfectly well from inside the inn, and the defendant must pay a double fine—one for the original blow, the other for the experimental and official thump.—*Once a Week.*

REPORT OF THE COMMITTEE ON BANKRUPTCY AND INSOLVENCY.

17th April, 1868.

The Select Committee appointed to inquire into and report upon the nature and operation of the laws of Bankruptcy and Insolvency now in force in the several Provinces of the Dominion, with power to report from time to time, beg leave to present the following as their third report:—

In pursuance of the objects for which they were appointed, your Committee proceeded to ascertain, in the first place, what are the laws respecting Bankruptcy and Insolvency in existence in the several Provinces.

In New Brunswick there is no bankrupt or insolvent law whatever, nor are there any provisions of law under which the estate and effects of a person unable to pay his debts can be distributed among his creditors, otherwise than by the ordinary means of executions issued at the suit of those obtaining judgments, nor under which the preferences and liens to which executions give rise under the common law and statute law can be avoided or set aside for the benefit of creditors generally.

In Nova Scotia an Act is in force for the relief of insolvent debtors, but its operation is limited. It is rather a remedial measure, intended to supplement and mitigate the law of imprisonment for debt, than a complete system of insolvent or bankrupt law, having for its object the discovery and realization of the assets of an insolvent, and his discharge from liability in consideration of the surrender of his property.

This Act, cap. 137 of the Revised Statutes of Nova Scotia, third series, permits a person imprisoned on any writ of *mesne* process, execution, or attachment for non-payment of money issuing out of the Supreme Court, to petition for his discharge. And upon complying with the conditions prescribed by the Act, he has a right to obtain an order discharging him from custody, in the suit or proceeding in which the warrant for his imprisonment issued. These conditions render necessary a discovery by the Insolvent under oath of the property he possesses and of the debts he has incurred, and require of him as a preliminary to his release the execution of a deed of assignment in trust, for the benefit of the debtor upon whose suit he was arrested. The effect of the order for his discharge seems only to release him from the restraint upon his liberty, actually imposed upon him in the

suit or proceeding in which the order is made. And the assignment in trust seems only calculated to enure to the benefit of the creditor, who is plaintiff in the suit.

The act, therefore, seems to afford to any creditor effective means for compelling payment of the debt due him; but its tendency must be to impede or entirely prevent the distribution of assets among creditors generally. And it affords no means by which, on any conditions whatever, a debtor once insolvent, can be enabled to continue his business with any hope of ultimate success.

In the Province of Ontario, although unrepealed laws respecting insolvency still stand upon the Statute Book (Consol. Stat. U. C., cap. 18 and 26), they have been practically disused since the passage of the Insolvent Act of 1864.

In the Province of Quebec no insolvent law is in existence except the Insolvent Act of 1864; although one of the principles upon which every system of bankrupt law rests is a leading feature of its common law. The right of the creditors of an insolvent to a just distribution of his assets among them all, has always been recognized by the Bar of Lower Canada; although the means under the common law of enforcing that right were cumbrous and expensive. The effects of the debtor could only be realized under execution, and by this process only the minimum price of the goods sold was ever obtained.

And after deduction of the costs of the action, the expenses of the execution, the cost of filing the claims of the creditors, and of preparing and rendering the judgment, distributing the moneys, the moveable effects of a debtor seldom realized sufficient to pay the rent and other privileged claims upon them. With regard to real estate, it almost invariably happened that the debtor, having no means of obtaining a discharge in case of failure, had burthened it in a considerable proportion to its value before he finally stopped payment, and at a Sheriff's sale of it for cash, it usually fell into the hands of the mortgagee, who had the privilege, by reason of his right to the proceeds, of abstaining from paying the price unless his claim proved invalid. No means existed for obtaining possession, or even a sight of the books of an insolvent, and his debts could only be obtained by attachment, a process so costly and so inconvenient as to be seldom if ever resorted to, except as to isolated claims of large amount.

Practically, therefore, the only Insolvent or Bankrupt law in the Dominion which is extensively resorted to is the Insolvent Act of 1864, an act prepared by the Parliament of the late Province of Canada in that year, and having force in the Provinces of Ontario and Quebec. With regard to the other systems referred to, your committee believed, from the preliminary enquiries they made respecting them, that a more extended and minute examination of their nature and operation was unnecessary.

But the Insolvent Act of 1864 appeared to be acted upon so frequently in the late Province of Canada, and to enter so largely into the regulation of commercial questions connected with insolvency, that your committee felt it to be their duty to organize as formal and extensive an inquiry into the operation and effect of it as their powers enabled them to do.

With this view it was determined in the early part of the session to address a series of questions to persons interested in its working, and to those engaged in putting it into force. These questions were of two classes, one of which was submitted to all the persons addressed, and another which accompanied the first when it was transmitted to persons holding any official position, giving them cognizance of proceedings adopted under the act.

These questions were addressed as follows:—

1. They were addressed to one hundred and sixty-two persons, including all the judges having jurisdiction.

2. All the clerks and prothonotaries of the courts before which proceedings are had.

3. All the Boards of Trade throughout Quebec and Ontario.

4. All the official assignees whose names could be ascertained.

5. And to a large number of Solicitors, Merchants and Accountants.

And answers have been received from a considerable proportion of these Institutions and persons throughout the provinces of Ontario and Quebec.

And your committee believe that the general purport of the answers, thus obtained, fairly indicates the views of the community upon the nature, operation, and effect of the law.

It will be observed, that, in scanning the questions already referred to, your committee desired to elicit opinions and information.

Firstly: With regard to the procedure requisite under the act to vest the estate of an Insolvent in the Assignee.

Secondly: With regard to the provisions for the management of the estate while in the possession of the Assignee.

Thirdly: With regard to the means of preventing fraud, and fraudulent preferences, and of punishing those guilty of either.

Fourthly: As to the regulations respecting the Insolvent and his discharge; and,

Lastly: As to the general effect of the law, and particularly as between the Insolvent and his Creditors.

Adopting this order, as matter of conscience, and proceeding to discuss the first subject of inquiry, namely the procedure requisite under the Act for vesting the estate of an Insolvent in an Assignee; Your committee would observe, that under the Act, this may be either voluntary or compulsory.

Under the Act, as originally passed, an Insolvent desirous of making a voluntary assignment, was ordinarily required to await the selection of an Assignee by his creditors, before making an assignment; and this necessitated a notice, calling a meeting of his creditors, which could not be given in less than two weeks, and might extend over a longer period.

An amending Act in 1865 permitted him to make a voluntary assignment, without notice to his creditors, to any one of a class of men selected by the Boards of Trade for the purposes of the Act, and styled Official Assignees. But the amendment did not prohibit the calling of a meeting, and the selection of an assignee by the creditors in the manner provided by the first Act. These modes of appointing an assignee to a person voluntarily placing himself within the purview of the Act have been fully discussed in the replies, and various opinions have been expressed upon them. The question whether the debtor should assign to an assignee at his own domicile, or to one resident at the domicile of the majority of his creditors, has also excited much attention, and the validity of the latter class of assignments has been disputed before the courts with conflicting results. And the propriety of allowing the debtor to select his assignee, even though he be restricted in his choice to the persons selected by the Board of Trade, is combatted. And while the opinion generally prevails that the creditors should have the exclusive power of choosing the assignee: there is an equally prevalent disinclination to permit the debtor to retain possession of his estate pending the time requisite for the notices preliminary to exercising that power at a meeting properly called.

The attention of your committee has, therefore, been first attracted by the result of their enquiries as to the extent to which in a voluntary assignment the creditors should influence the choice of an assignee; whether or no the Act leaves to the debtor after his acknowledged failure too extended a control over his property, in the event of his calling his creditors together to appoint an assignee, and how far the choice of such assignee is restricted by considerations as to his place of residence.

If the debtor calls a meeting of his creditors, as he would under the Act of 1864, the delay required for the notices he must give does not appear to be considered more than sufficient to enable a full attendance of creditors to be procured, and the information as to his affairs which he is required to give before or at the meeting so called seems to be sufficient. But if he adopts

this mode of proceeding he has the undisputed possession of his estate, and his books, for a time amply sufficient to enable him, if he pleases, to dispose of assets, make entries, or receive or expend debts due to him, in such a manner as to injure his creditors.

On the other hand, if he follows the procedure permitted by the Act of 1865, he himself exercises the right of selecting his assignee; and however limited the number of persons from whom his selection may be made—it is stated that in certain cases the competition has given rise to collusive arrangements and favouritism;—both alike detrimental to that thorough investigation of the affairs of the estate in which the creditors should have the energetic co-operation of the assignee.

These considerations and the suggestions contained in the replies laid before the committee, appear to point to some arrangement by which the debtor should make an immediate assignment to some official person, who should at once call a meeting of the creditors, and during the interval of time required for notices, should perform similar duties to those imposed by the present act upon the guardian in compulsory liquidation. By this mode it is suggested that the estate would be at once secured; the information required to enable the creditors to act intelligently in the choice of assignee would be prepared; their freedom of selection would be preserved; and while the notices were being published the preparations for realizing the estate would be progressing.

With regard to the residence or quality of the assignee to be ultimately chosen by the creditors, the prevalent idea of the Act seems to be, to give the entire control of the conduct and arrangement of the estate to the creditors as being a matter in which they alone are interested. They are authorized to make such regulations for winding it up as they think proper—they can pronounce upon nearly every question as to its administration, that can arise; and the success or failure of the means they adopt only results in the increase or diminution of their dividends, as the case may be. It may be of the highest importance to creditors to have an active and competent man as assignee, though he may not reside in the same place as the debtor, and the identity of domicile of the debtor and the assignee will be an insufficient substitute for qualities essential to the advantageous administration of an estate. Your committee therefore are of opinion, that a liberal interpretation of the Act, under which no restriction is imposed on the choice of an assignee by the creditors, is beneficial, and in accordance with the general tendency of the Act. But the selection of assignee should not in any respect affect the *forum* having jurisdiction over the Insolvent and over his acts and contracts.

The same remarks will in many respects apply to the proceedings, by means of which an insolvent is compulsorily divested of his estate. The choice by the Sheriff of a guardian, like the choice of an interim assignee by the creditors, should be restricted to persons resident in the locality, for the sake of convenience in the immediate protection of the estate; while the ultimate selection of an assignee should be left free, that the creditors may obtain the person they consider best calculated to procure for them the largest returns from it.

With regard to the procedure for compulsory liquidation; in the great majority of answers the provisions of the Act seem to be considered convenient and sufficient. The most important addition proposed is suggested by several of the Boards of Trade, to the effect that a levy under execution should be made a ground for compulsory liquidation; and that money so levied within sixty days before the insolvency should be recoverable by the assignee either from the Sheriff, or from the seizing creditor to whom he has paid it, as the case may be. The first branch of this suggestion appears to be already met by the provisions of the Act. The second would seem to be open to many grave objections, and could only be sustained on a principle inconsistent with that upon which mainly rests the law as to preferences enunciated by the Act.

Upon the second class of enquiries—namely, those having reference to the mode of winding up the estate after it has reached the assignee—the suggestions received have been numerous. In this stage of proceedings in insolvency, the interest of the debtor in his estate has virtually ceased to exist. The duties of the assignee may be summed up, as requiring him to act for the best interests of the creditors in realizing the estate for their benefit; and the theory of the law seems to have been that as the parties chiefly interested they should have the chief direction of his actions. This view has been adopted in most of the replies, and the suggestions have been made chiefly with the intention of facilitating the exercise by the creditors of their control over the assignee; of increasing his powers acting under such control; of abridging delays and of diminishing expenses. These objects are sought to be attained by various means, the principal of which may be thus summed up:—

By authorizing the appointment from among the creditors of a superior or supervising Committee, to whom the creditors may delegate all or any portion of their authority in respect to the winding up of the estate.

By authorizing the assignee to offer a reward for the discovery of concealed assets.

By authorizing the guardian and assignee to obtain communication of all letters addressed to the Insolvent.

By abridging the period required for advertizing the sale of real estate, the intervals between the insolvency and the power of declaring dividends, holding legal meetings of creditors and the like.

The first and second of these classes of suggestions seem to interest the creditors alone, and probably they may safely have power to give to a Sub-Committee of themselves the powers of administration, which they themselves may exercise; and to decide to what extent they may beneficially employ the funds of the estate, in procuring information as to concealed assets. It would only be necessary, in the interest of the great body of creditors, to provide against the abuse of these powers by a section of the parties interested to the injury of the majority.

The desire that power shall be given to examine the wife of the Insolvent seems to be entertained by the Boards of Trade and by some others of the parties answering.

Act of 1861, c. 118, the Bankrupt Law of England permits the examination of the wife for the discovery of effects illegally concealed, kept or disposed of, and the jurisprudence is said to confine her examination strictly to these points. The new United States statute authorizes the summoning of the wife to attend for examination "as a witness," but it gives no power to compel her submission for examination, and provides no penalty for disobedience except the refusal of her husband's discharge unless he proves that he could not procure her attendance. The Scotch statute authorizes the examination of the wife of a bankrupt relative to his estate. And both in England and in Scotland the right of examining to some extent the wife of a bankrupt, preceded the change in the law of evidence which permitted her to be examined as a witness in ordinary civil cases to which her husband is a party.

Your Committee, therefore, report upon this point that their investigation discloses a prevalent opinion in accordance with the rule adopted in other commercial countries, namely, that the wife of the insolvent should be to some extent subject to examination as to his estate.

With regard to the delays provided for by the Act, which it is suggested should be abridged, it may be remarked that the greater portion of these delays appear to be justified solely on the ground of the possible or probable existence of creditors in other countries having the right of assisting at the decision of important questions, or of sharing in the proceeds of the estate. As the Act now stands they are not uniform, for practically in voluntary assignments the interval between the first notice of the insolvency, and the time for legal meetings or dividends is lengthened or diminished according as the assignee is appointed with

or without notice to creditors; and this interval is again greatly increased when the appointment is made in compulsory liquidation. If the interval were made to count from the date of the first advertisement of any kind published in either case under the Act, and were reduced to six weeks instead of two months, the effect would be an abridgement of delay in most cases of fully one month, and a closer approach towards uniformity in the two modes of acquiring control over the debtor's estate.

And a like desirable object might be obtained as regards the sale of real estate, by fixing the maximum length of the advertisements required, and leaving to the creditors, or to their supervising committee, the right of still further diminishing it.

The absence of power to receive and open letters addressed to the insolvent is also pointed out in several of the answers as being a defect in the act. No such provision exists, nor in fact is it to be found precisely in that form in the American or British bankrupt acts. It is true that in the English and Scotch acts the judge is authorized to make an order to that effect extending over a limited period; but it does not appear to what extent judges in England have exercised this power. The only case cited in the treatises applied to the letters addressed to a debtor who had absconded, which would probably be admitted to be a fit occasion for the exercise of such a power. Under the United States bankrupt law no authority of the kind is conferred or can be obtained.

Your committee therefore report upon this point that it is suggested in several of the answers that the power of opening and receiving letters addressed to the insolvent should be conferred upon the assignee, and would be an advantageous addition to the existing law; and that in England and Scotland the judge is authorized to grant this right to the assignee.

Among the duties of the assignee is comprised that of collecting the debts, and in the event of being unable to collect, of selling those remaining unpaid. There are certain restrictions upon the sale of debts by the assignee, of the general effect of which no complaint is made. But there is one particular case in which the restriction upon the sale of debts by the assignee, as well as upon the sale of real estate, is suggested to have operated disadvantageously to the creditor. This appears to have occurred where the creditors thought it for their interest to sell *en bloc* the entire estate of an insolvent, including his debts and real estate, either for a gross sum or at a rate per pound upon his liabilities. It would seem from the information before the committee that this mode of closing an estate might occasionally be advantageously resorted to, and that if the power of doing so be carefully guarded it would be expedient to grant it.

The third point to which the attention of your committee has been directed, namely, the prevention and punishment of fraud and of fraudulent preferences, has been discussed at considerable length in the answers received by your committee. It appears to be considered that there are not sufficient provisions in the act for some of these purposes; and many suggestions have been made with a view to supplement them.

The Act as it now stands, defines and describes what constitutes fraudulent conveyances, and fraudulent preferences. Recent judicial decisions upon the clauses appropriate to these subjects, appear to indicate a necessity for a criticism of their language, but with such amendments as may suffice to give them the offset they evidently contemplate, there would be no necessity for any addition to them. The real difficulty appears to be in compelling the Insolvent to surrender his entire estate; and it is proposed to insure this, by providing for various forms of examination, and of declaration under oath; by punishing concealment as a criminal offence; and by making it a disqualification for a discharge.

(*To be continued in our next No.*)

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BAR OF MONTREAL.

The Annual Report of the Council of the Bar for 1867 shows that the Act of 1866 has already had a marked effect upon the number of admissions to practice and to study. The admissions to practice during the year ending May 1st, 1868, were thirty in number, and the admissions to study only twenty-one. The receipts for the year were $2,690.20, and the disbursements $2,053.81, leaving a balance of $636.90. The number of books added to the Library was 239, at a cost of $885.

One portion of the Report has an unfavorable appearance, namely, the statement that seven complaints had been brought before the Council of the Section against nine members of the profession. One of these complain to was rejected *in limine*, on the ground that the charge did not impugn the professional conduct of the accused. Another charge was discontinued, and a third was still pending. The remaining four had been decided on the merits. In one case the defendant was suspended from practice for the term of two years. In two other cases the defendants were acquitted, but condemned to pay the costs, in consequence of certain discreditable facts disclosed by the evidence. In the fourth case, one of the defendants was acquitted, but condemned in costs for the same reason; and the other defendant was condemned to be censured by the Batonnier, and deprived during three years of the right of voting or being present at the meetings of the Section.

At the semi-annual meeting on the 1st of May, Mr. A. Cross, Q.C., was elected Batonnier.

JUDICIAL PENSIONS.

In the Canadian House of Commons, on the 14th of May, the principle of the new Pension Act was carried by 105 to 35. The new Act permits judges who have served fifteen years, or who are disabled by infirmity, to retire on a pension equal to two-thirds of their salary. This is a measure which puts the Lower Canada judges on the same footing as the Upper Canada judiciary, and will, we believe, have a most salutary effect. The certainty of a pension is really equivalent to a very considerable increase to the salaries of the judges. Incompetent or infirm judges must not expect now that their shortcomings will meet with the same tolerance as hitherto. They have no pretext now for not moving off the arena while better men are pressing forward.

ADMISSIONS TO PRACTICE.

On the 17th of June it was decided by the Committee of Examiners for the Montreal Section, that candidates who had not attained the age of twenty-one would not be admitted to examination. It appears that, in one or two instances, a candidate under twenty-one has been examined, the diploma being granted on his coming of age. The words of the statute are: "No person shall be admitted to practice as an advocate, attorney, solicitor, and proctor-at-law, unless he has attained the full age of twenty-one years." This clearly prevents a person under age from practising; and as the examinations are held every three months, there does not appear to be any hardship in requiring the candidate to be of age before presenting himself for examination.

IMPEACHMENT OF JUDGES.

In the latter part of the Session a petition was presented to the House of Commons for the impeachment of Mr. Justice Lafontaine. This is but a renewal of the charges referred to in the 2nd volume of the *Law Journal*. The matter will be investigated by a Committee during the next Session.

A petition was also presented by Mr. Chamberlin, signed by Mr. T. K. Ramsay,

Q.C., to impeach Mr. Justice Drummond. This petition, however, was withdrawn in accordance with the wish of the majority of the House, in consequence of certain charges in it being supposed to cast reflections on the whole Court of Queen's Bench.

LAW REFORM IN ENGLAND.

Under the title, "A few Observations respectfully submitted to the Royal Judicature Commission," Mr. F. S. Hull has published the following suggestions in regard to law reform. It will be noticed that nearly all the changes suggested are in actual practice in Lower Canada:—

1. I see no reason why the courts of common law and equity may not be fused into one, all questions of pure administration being worked out in the office of the registrar (or master or clerk), and all matters requiring judicial inquiry, or the verdict of a jury, being sent into open court, on issues raised in the manner after-mentioned.

2. I see no reason why bankruptcy should not be joined with law and equity, provided the functions of the court be limited to those of administration only.

3. I think that Admiralty cases require to be submitted to a judge and jury (or substitute for a jury) of a special training.

4. The business of Probate seems to me to be purely administrative, unless some dispute arises, and then there seems to be no difficulty in bringing the disputed issue to a hearing in the manner after-mentioned.

5. Suits should be commenced in all the courts by a written statement, setting out all the material facts on which the plaintiff rests his case; and the defendant should set out his defence in like manner.

6. Experience shows that one practitioner sets out a plain story even of complex matters, admitting the truth of adverse facts he believes to be true, whilst other practitioners, in a long and confused statement, distort the facts of a very simple story. This grievance can only be remedied *by the infliction of costs.*

7. A large discretion should, therefore, rest with the judge and taxing master, enabling them, whatever may be the result of the suit, to make the costs fall on the party who shall assert the truth of a material fact which turns out to be untrue, or who puts the other side to the proof of a fact the truth of which is known to the party requiring the proof.

8. I think this course of proceeding may be adopted in all the courts.

9. The real tussle would thus be the preparation of the case of each side *on paper*, the taxing master visiting the defaulter with costs.

10. I see no reason why various circles of business, including a bar, should not be created in districts having judges visiting these districts in circuit, and having the appeals heard in London at set terms in the year.

11. I think the distinction at present existing between the bar and the attorneys should be broken down, and the American system adopted, namely, that an attorney should be permitted to enter the ranks of the bar on his passing examinations showing that he is competent to act as an advocate. And if so competent, I see no reason why he should cease to practise as an attorney. An advocate so circumstanced would be more strictly bound to keep within the truth of his case. I see no reason why the present members of the bar should not practise as attorneys without any further examination.

STATUTES OF QUEBEC—31 VIC.

The statutes passed in the first session of the legislature of the Province of Quebec form a volume of 167 pages, comprising 59 Acts.

Cap. I. An Act for granting to Her Majesty certain sums of money required for defraying certain expenses of the civil Government, for the 18 months ending 31st Dec., 1868, and for other purposes connected with the public service.

Cap. II. An Act to amend certain Acts therein mentioned, and further to provide in reference to stamps. Sec. 6 enacts that

certificates of registration or search shall be ineffectual unless stamped; and requires every registrar to keep an entry of searches made in his office.

Cap. III. An Act respecting certain duties on licenses. This Act imposes further duties on licenses issued to pawnbrokers, auctioneers, &c.

Cap. IV. An Act respecting the office of Speaker of the Legislative Assembly. This provides that the Speaker of the Legislative Assembly may call on a member to take his place when obliged to leave the chair.

Cap. V. An Act respecting the indemnity to members of the Legislature, and the salary of the Speaker of the Legislative Assembly. Here the local Legislature has enacted the old 30 days' provision of the late Parliament. If the session lasts thirty days, the remuneration to members is $180, $6 per day, but if it lasts 31 days, each member gets $270 for the thirty-first day, as he then becomes entitled to $450 for the session. The Speaker's salary for the year 1868 is fixed at $2,400.

Cap. VI. An Act respecting the statutes of this Province. This Act regulates the printing, distribution, &c., of the statutes.

Cap. VII. An Act respecting the interpretation of the statutes of this Province.

Cap. VIII. An Act respecting the organization of the Civil Service.

Cap. IX. An Act respecting the Treasury Department and the public revenue, expenditure, and accounts.

Cap. X. An Act respecting the office of Minister of Public Instruction. Sec. 4 provides that the Minister of Public Instruction shall be eligible to the Legislative Assembly, and shall be a member of the Executive Council.

Cap. XI. An Act respecting the department of the Secretary and Registrar of this Province.

Cap. XII. An Act respecting the appointment of an assistant to the Law Officers of the Crown. Sec. 1 provides that the Lieutenant-Governor may appoint an officer under the Attorney-General and the Solicitor-General, to be called the assistant of the law-officers of the Crown.

Cap. XIII. An Act respecting the office of Queen's Printer for this Province, and the publishing of the "Quebec Official Gazette." This Act provides for the appointment of a printer and the publication of an official Gazette. This appointment has not yet been made.

Cap. XIV. An Act to continue for a limited time the several Acts therein mentioned.

Cap. XV. An Act respecting the appointment of Justices of the Peace.

Cap. XVI. An Act to diminish the expense of summoning Jurors in Criminal cases, and for other purposes. This Act is intended to prevent the Sheriff from unnecessarily summoning persons who are exempt from serving on juries.

Cap. XVII. An Act to provide for the paying over, in certain cases, of moneys received by Sheriffs, Prothonotaries, and Clerks of the Circuit Court.

Cap. XVIII. An Act respecting the proof of the laws and official publications of the other Provinces of the Dominion. This Act provides that copies of Acts, printed by a Queen's printer, of the other Provinces shall be received in evidence.

Cap. XIX. An Act respecting Colonization roads.

Cap. XX. An Act to encourage settlers. Sec. 1 exempts lands conceded to settlers from seizure (except for the price thereof) for any debt contracted previous to the concession.

Cap. XXI. An Act to amend the Gold Mining Act, and the Gold Mining Amendment Act of 1865.

Cap. XXII. An Act to provide more effectually for the support of schools in certain cases, and for other objects therein mentioned.

Cap. XXIII. An Act respecting Inspectors of Prisons, Hospitals, and other institutions.

Cap. XXIV. The Joint-Stock Companies General Clauses Act.

Cap. XXV. An Act respecting the incorporation of Joint-Stock Companies. The last two Acts appear to embody the provisions of the former Acts of the Province of Canada.

Cap. XXVI. An Act to amend the Game Laws of this Province.

Cap. XXVII. An Act respecting the storage of gunpowder in and near the cities of Quebec and Montreal. Sec. 2 provides that no powder magazine shall be kept within the limits of said cities, nor within five miles thereof. Sec. 3 provides that the Lieutenant-Governor in Council shall make regulations for the storage, &c., of gunpowder.

Cap. XXVIII. An Act to amend chapter 18 of the C. S. L. C.

Cap. XXIX. An Act to annex a portion of the Seigniory of Bélair to the Parish of St. Ambroise, and another portion thereof to the Parish of St. Catherine.

Cap. XXX. An Act to divide the municipality of the township of Percé, in the county of Gaspé, into two separate municipalities.

Cap. XXXI. An Act to legalize, in certain respects, the proceedings of Boards of Notaries.

Cap. XXXII. An Act to provide for the appointment of a Fire-Marshal for the cities of Montreal and Quebec, and to define his powers and duties. This is the famous Act under which Messrs. Austin and Desnoyers have been appointed for the city of Montreal. The Act contemplated the appointment of only one person in each city, the singular "an officer," "a fit and proper person," being used; but it has been thought proper to make it a joint office in Montreal. The validity of this Act has been attacked, and it has also been alleged that the Act as passed contained words (requiring the Marshal to be present at every fire in person or by deputy) which are omitted in the printed bill.

Cap. XXXIII. An Act further to amend the Act to amend and consolidate the provisions contained in the Acts and ordinances relating to the Incorporation of city of Quebec, &c.

Cap. XXXIV. An Act to amend the Act 12 Victoria, c. 282, and to provide for a further increase of the capital stock of the Quebec Gas Co.

Cap. XXXV. An Act to incorporate the "Quebec Curling Club."

Cap. XXXVI. An Act to amend the Act of Parliament of Canada, 23 Vic., c. 70, respecting interments in a certain burial-ground in the city of Quebec.

Cap. XXXVII. An Act to amend the Acts relating to the corporation of the city of Montreal, and for other purposes. We do not see anything about a public park in this Act; but sec. 26 authorizes a special loan of $250,000 to build a new city hall, the debentures for which loan are to bear seven per cent interest, payable semi-annually.

Cap. XXXVIII. An Act to incorporate the members of the "Synod of the Diocese of Montreal," and to merge "The Church Society of the Diocese of Montreal" in such Synod.

Cap. XXXIX. An Act to amend the Act incorporating the Montreal City Passenger Railway Company.

Cap. XL. An Act to incorporate "The Canadian Building Society of Montreal" a Permanent Building Society.

Cap. XLI. An Act to incorporate the Building Association of Montreal.

Cap. XLII. An Act to incorporate the Montreal Manufacturing Co.

Cap. XLIII. An Act to incorporate the Montreal Caledonia Curling Club.

Cap. XLIV. An Act to incorporate the Association known as "*La Société des Commis-Marchands de Montréal.*"

Cap. XLV. An Act to amend the Act incorporating the Massawippi Valley Railway Company.

Cap. XLVI. An Act to incorporate the Chambly Hydraulic and Manufacturing Co.

Cap. XLVII. An Act to incorporate the Canada Marine Insurance Co.

Cap. XLVIII. An Act respecting the Rockland Slate Co.

Cap. XLIX. An Act to amend Act 22 Vic., c. 106, incorporating the town of St. John's.

Cap. L. An Act to incorporate the "St. Jean Baptiste Society of the town of St. John's."

Cap. LI. An Act to amend the Act incor-

porating the "St. Joseph's Union of St. Jean d'Iberville."

Cap. LII. An Act to amend the divers Acts incorporating the town of Lévis.

Cap. LIII. An Act to incorporate the Society called the "Union St. Pierre du Village Bienville de Lévis."

Cap. LIV. An Act to incorporate the Society called "L'Union St. Joseph à St. Sauveur de Québec."

Cap. LV. An Act to authorize the Ministers of the Church calling themselves the "Catholic Apostolic Church," in the Province of Quebec, to solemnize matrimony, and to keep registers of baptisms, marriages and burials.

Cap. LVI. An Act to authorize the Sisters of Charity of the General Hospital of Montreal to acquire property to a certain value, and to dispose of the same.

Cap. LVII. An Act respecting the minutes of the late Theodore Doucet, in his lifetime of the city of Montreal, Notary Public. This Act permits the minutes referred to to remain in the hands of the son of deceased under certain conditions.

Cap. LVIII. An Act to facilitate the partition of the estate of the late John Coffin.

Cap. LIX. An Act to authorize the Montreal board of Notaries to admit, after examination, Norbert D. D. Bessette to practise as notary.

THE LAW OF MARRIAGE.*

The law regulating marriage is a subject which has of late attracted considerable attention in various quarters of the globe, and not least in both Upper and Lower Canada. In the pamphlet before us, consisting of articles which appeared a short time ago in the *Nouveau Monde*, Mr. Girouard has taken up the subject with great vigour and animation, and advocated his views with his usual ability and eloquence. We cannot at present enter into a detailed notice of the various points considered by Mr. Girouard, but will briefly state some of his conclusions, with a few extracts from his argument. Mr. Girouard seeks to show that as well under the Code as previously, the marriage of Catholics should be celebrated, "1. En face de l'Eglise. 2. Par le propre curé des parties. 3. Après publication ou dispense de Bans. 4. Il ne doit exister aucun empêchement non dispensé par leur evêque." He contends that the marriage of Protestants should also be celebrated by their own minister, publicly, after the publication of bans; unless there be a marriage license, in which case it is sufficient that the marriage be celebrated by the minister of the parties. The marriage of a Catholic with a Protestant should be performed in the same manner, according as it is celebrated by the priest or minister of one or other of the parties. The marriage of Catholics in holy orders, or of persons civilly dead, he maintains to be null.

Referring to the case of *Perry* v. *Lighthall*, recently decided, the writer deplores the facility with which some clergymen unite in matrimony persons who come to them with a license. "Que doit donc exiger la loi pour la célébration des mariages, pour empêcher les abus déplorables que nous venons de signaler? La réponse à cette question est simple est courte; le mariage, pour être valablement contracté, doit être célébré par le propre prêtre ou ministre des parties, ou avec son autorisation écrite." The author would read the 128th article of the Code, "Marriage must be solemnized openly, by a competent officer recognized by law," with the following addition, "suivant les usages et les règles de l'Eglise des parties."

In some parts of his observations, Mr. Girouard departs to some extent from the strict province of the lawyer. Thus, he regrets the restriction imposed on the Pope's power of dispensation: "Il est surtout regrettable que le code ait innové à l'ancienne jurisprudence quant au droit du Pape de dispenser de l'affinité au degré prohibé, comme entre beau-frère et belle sœur, changement qui pourrait avoir des résultats désastreux; car personne n'ignore

* Considérations sur les lois civiles du mariage, par Desiré Girouard, Avocat, Montréal.

que de tels mariages ont été contractés, en vertu de dispenses du Pape, depuis la mise en force du code. L'amendement que nous suggérons semblerait mettre fin à ce spectacle immoral et dangereux d'un homme innocent devant l'Eglise, mais coupable devant l'Etat." This would seem to involve a right of supreme control on the part of the Head of a Church, which the author, we feel confident, would strenuously resist, if an attempt were made by the head of any other denomination to exercise it. The tendency of the present age is to separate Church and State, and restrict the authority of the former within narrower limits. Catholic as well as Protestant States are taking steps in this direction. Thus, we read in this morning's paper, a Papal Allocution of 22d June from which we infer that Austria, though a staunch upholder of the Catholic faith, is following the example of other countries. The following is an extract:

"Moreover the same law suppresses entirely the validity of the promises which the Catholic church with reason and with the greatest justice, exacts and prescribes absolutely before the celebration of mixed marriages. It makes apostasy itself a civil law both as regards the Catholic religion and the Christian religion generally; it suppresses all authority of the church over cemeteries, and Catholics are bound to allow the bodies of heretics to be buried in their churchyard if they have not any of their own. Moreover, the same Government on the said 25th day of May of this present year, did not hesitate to promulgate a law on marriage which entirely cancels all the enactments agreed to in the convention already alluded to; this law restores the former Austrian laws, which are contrary to the laws of the church; it admits, and even confirms, that form of marriage absolutely condemnable, called civil marriage, when the authority of any confession whatever refuses the celebration of the marriage on grounds which are not admitted as valid or as legal by the civil authorities. By this law the same Government has suppressed all the authority and jurisdiction of the church on matters relative to marriage, as also of all competent ecclesiastical tribunals on the subject."

We cannot quite concur with the author in lamenting that marriages not contracted according to prescribed forms are not absolutely null. "Pourquoi encore," he asks, "a-t-on changé ces dispositions de la loi qui frappaient de nullité les mariages contractés sans les formes prescrites? Dans ce pays où le lien conjugal est indissoluble, il est surtout nécessaire qu'il ne puisse être contracté qu'après mûre considération; il importe que les parents et amis des parties intéressées puissent raisonner avec elles; et la stricte observance des conditions et des formalités du mariage est la plus sûre garantie pour elles-mêmes et leurs familles." It seems to us that an apt answer may be found in the emphatic words of Bishop, in a recent work, with reference to the marriage of very young people, "The law does not approve of the marriage; it merely, in some instances, keeps its fingers out of other people's messes."

In conclusion, we would commend the pamphlet under notice, to the attention of our readers. It contains a number of points that we have been unable to notice, and is written in a style so spirited that additional interest is given to the subject.

PERRY *V.* TAYLOR.

This is a case which has attracted general attention, both from the public and the legal profession. The defendant, the Rev. Dr. Taylor, is a minister of the Canada Presbyterian Church, who had married the son of the plaintiff, a lad of 16, to a widow, aged 49. The parties presented themselves before Dr. Taylor with a license, and the boy being asked his age by the clergyman, declared himself to be 22 years of age. This marriage was annulled by the Superior Court in a previous suit brought by the plaintiff for that purpose, the ground of nullity being the want of consent on the part of the parents of the minor. The action *Perry* v. *Taylor* was instituted for the recovery of damages for the illegal marriage. Mr. Justice Monk, on the 9th of July, after reviewing the facts appearing

in evidence, expressed the opinion that the reverend gentleman should have done more than merely ask the age of the minor, the disparity of age and other circumstances being such as to awaken suspicion. He considered that a want of proper care had been manifested by the defendant, and on this ground he condemned the defendant to pay $100 damages, and the costs of the action as brought.

This decision seems to have been pretty generally approved by the public, as far as we have observed. It is certainly desirable that clergymen should not be in any uncertainty as to their responsibility in respect to the parties whom they marry.

BEAUDRY *V.* WORKMAN.

It is not surprising that attempts should be made to override or evade a statute which rigorously deprives an unsuccessful litigant of the right of appeal. Accordingly, notwithstanding all the decisions recently given, to the effect that, where the law has given no appeal, there is no right of revision, another attempt was made, in the case of *Beaudry* v. *Workman*, in the June term, to obtain the revision of a judgment in a case in which there was no appeal. A distinction was attempted to be drawn between final judgments and interlocutory judgments, it being contended that it was from a final judgment that there was no revision. This attempt, though supported by an able and ingenious argument, proved unsuccessful, the majority of the Court holding that there is no right of revision in the case of an interlocutory judgment in municipal cases. Mr. Justice Mondelet, however, dissented, as did Mr. Justice Smith, on a former occasion, and Mr. Justice Monk has several times given a reluctant assent to the principle established by previous decisions, so that we may expect to have the point presented again. We may add that the Court of Review called the Prothonotary's attention to a previous order directing him not to receive inscriptions for review in these cases.

WIGGINS *V.* THE QUEEN INSURANCE COMPANY.

On appeal by the plaintiff, the judgment rendered in this case by Mr. Justice Berthelot (3 C. L. J. 128), has been unanimously reversed by the full Court. This judgment does not touch the correctness of the verdict. The judges in appeal do not say that the jury were justified by the evidence in finding the verdict they did. This question did not come before them. They simply decide that the verdict found was really a verdict for the plaintiff, and not for the Company. They hold the words "but not in due form," inserted by the jury in one of their answers, to be mere surplusage and of no effect, and that their other answers constituted a good finding for the plaintiff.

EX PARTE GARNER.

The decision given in this case by Mr. Justice Drummond on the 15th of July, is deserving of some attention. It would appear that the police authorities in Montreal, having received certain information which led them to imagine that Garner could be extradited for an offence supposed to have been committed by him in the United States, caused him to be apprehended without any warrant being issued. Detective Cullen was in charge of the party that made the arrest, and this officer went so far as to tell Garner that there was something against him on the score of Fenianism. Garner accompanied the constables quietly at first, but on the way to the station, being asked by Cullen why he kept burglar's tools in his house, he shook off his captors and retreated some distance. Cullen having covered him with his revolver, and demanded his surrender, Garner fired his revolver at the detective and severely wounded him. Garner was recaptured, but no attempt was made to take proceedings against him under the Extradition Treaty. He afterwards made application to be admitted to bail, the detective having by this time recovered from his wound which was at first thought to be mortal. The application was rejected by

Mr. Justice Badgley, who considered the prisoner as a bird of passage, without domicile here, and, moreover, a man found in possession of burglarious tools. The application was then renewed before Mr. Justice Drummond. Our law requiring such fresh application to be based on new facts, affidavits were put in that Garner had acquired a domicile here by purchasing real estate, and that he was not aware that the tools were in his house. Judge Drummond considered these new facts sufficient to give him jurisdiction, and then taking into consideration the whole case, as though the application had been made before him in the first instance, he considered himself bound to admit the prisoner to bail. The report of the judgment in the daily papers is not sufficiently connected to enable us to follow the judge's reasoning, but if the reports are at all to be relied upon, his Honour seems to have gone very far indeed in his justification of the act. We cite one passage:—"The police have no power to arrest unless the prescribed forms have been complied with. If the seven men who went to make the arrest at Garner's house, had been resisted by him, *and he had shot them all, would any lawyer say that it would not have been justifiable?* It was legal for him to resist; if the police had no right to arrest, they had no right to detain their prisoner. There was no doubt that Garner was justified in shooting Cullen if the latter raised his revolver first. But there was no proof of his intent to murder, for even if Garner raised his revolver first, it was done when he was retreating. Cullen says 'Garner tried to escape, and I tried to prevent him.' As to a chance of Garner being convicted, I don't see that any jury would bring in a verdict against him."

CIRCUIT COURT, QUEBEC.

JUNE TERM, 1868.

SCOTT ET AL. *v.* ALAIN ET AL., and ALAIN, Opposant.

Held, that a Sheriff or bailiff executing a writ of *fieri facias*, is bound, under Art. 570, C. C. P. Q., to give immediate *written* notice of the time and place of the sale to the defendant.

In this case the plaintiffs caused a writ of *fieri facias* to issue against the chattels of the defendants, which was put into the hands of a bailiff for execution, who seized certain property of the defendant Alain, and duly advertised it for sale in a French and English newspaper of the city of Quebec. He also notified Alain, at the time of making the seizure, of the time and place of the sale—this verbally. On the day fixed for the sale, an opposition *afin d'annuller* was put in by Alain, on the ground, among others, that he had not been notified of the sale until the day previous; and this was supported by the usual affidavit. The bailiff entrusted with the execution of the writ of *fieri facias* upon this returned it into court, together with his *procès-verbal*, which set forth that he had seized the effects of the defendant Alain, and had given him immediate notice of the time and place of the sale.

The opposition was contested, and the case brought to trial. No further proof than the *procès-verbal* of the bailiff, and the affidavit of the opposant, was produced on either side.

For the opposant it was urged that, inasmuch as no proof had been adduced that any immediate *written* notice of the time and place of the sale had been given to the defendant, *main levée* should be ordered with costs.

For the plaintiffs contesting, it was maintained that, inasmuch as the *procès-verbal* of the bailiff stated that "immediate notice" had been given, that instrument being an *acte authentique*, ought to override the affidavit of the opposant, and his opposition be dismissed.

Taschereau, J. I consider that the notice given was not sufficient under the Code, which intends that it should be a written one: the opposition is therefore maintained with costs.

Ivan T. Wotherspoon, for Plaintiffs.

J. Malouin, for Opposant.

SUMMARY OF RECENT QUEBEC DECISIONS.

Bornage—Fence.—Held, 1. That in an action *en bornage*, the existence of a fence between the two properties for upwards of thirty years before action brought, entitles the defendant to claim such fence as the legal boundary or division line between the properties. 2. Although such fence be so constructed as to form an irregular encroachment on the plaintiff's land, to the depth of about seven feet by about forty-eight feet only in length, along a portion of the line of division between the properties, and although the title deed of the defendant and the title deeds of all his *auteurs* show the line of division between the properties to be a straight line, throughout its entire length, and are silent as to the encroachment; and although defendant's possession only dates back a little over four years, he nevertheless can avail himself of the possession up to the fence, of all those from whom he derives title to the property described in the deeds. 3. Verbal evidence to the effect that the fence had been for upwards of thirty years in the same line as it was at the time of the action, is sufficient, although it be proved that such fence was entirely destroyed by fire, and remained so destroyed for upwards of a year, and none of the witnesses testify to having seen a vestige of the old fence after the fire, or to having been present when the new fence was built.—*Eglaugh* v. *The Society of the Montreal General Hospital*, 12 L. C. J. 39.

Insolvent Act—Assignment.—Held, that a voluntary assignment made by an Insolvent under 29 Vic., cap. 18, sec. 2, to a duly appointed official assignee, is valid, although the assignee is not resident within the district within which the Insolvent has his place of business.—*Exparte Smith*, 12 L. C. J. 51.

Possession—Wild Animal.—A person pursuing a wild animal is considered to be the possessor while the pursuit lasts, and another person will not be allowed to take possession of the animal; if he does so, he must pay the value.—*Charlebois* v. *Raymond*, 12 L. C. J. 55.

Practice—Admissions.—Held, that an admission by the defendant's attorney of the existence of a will referred to in plaintiff's declaration, and a consent that an authentic copy thereof should be considered as filed in the cause as plaintiff's exhibit, is null and void, and of no effect.—*Hynes* v. *Lennan*, 12 L. C. J. 53.

Sale of encumbered land—Trouble.—Held, 1. That where a party is sued for the price of land which is burdened with hypothecs beyond the price claimed, and the party sued has demanded before action that such hypothecs should be discharged, or good and sufficient security given against all possible trouble arising from such hypothecs, and the plaintiff has failed to cause the hypothecs to be discharged, or the required security to be given, his action ought to be dismissed purely and simply. 2. That mere personal security in such a case is insufficient. 3. That although in such an action, the defendant, by her plea, only prays for the dismissal of the action, in case the necessary security be not given within a delay to be fixed by the judgment, and although the judgment in the Court of original jurisdiction be rendered according to the conclusions of said plea, and such judgment be confirmed in Review, the Court of Appeal, on an appeal instituted by the plaintiff only, and without any cross appeal by the defendant, and although the respondent prays, in her answers to the reasons of appeal, and in her *factum*, for the confirmation of both judgments, will nevertheless reform these judgments and dismiss the original action purely and simply.—*Dorion* v. *Hyde*, 12 L. C. J. 49.

Shareholder—Calls on Shares—Compensation.—Held, that compensation takes place *pleno jure* of the debt due (unpaid stock) by a shareholder in the Montreal and Bytown Railway Company, incorporated by 14 and 15 Vic., cap. 51, with a debt due by the Company to the shareholder for arrears of salary as President of the Company. *Delisle* v. *Ryland*, 12 L. C. J. 29.

Usufructuary.—Held, that the *donataire universelle en usufruit* by contract of marriage is bound to advance the *frais d'inven-*

taire of the effects subject to her usufruct. 2. That the fees of a notary employed by the heirs of the deceased, to make the will in conjunction with the notary chosen by the usufructuary, form part of these costs.—*Prévost* v. *Forget*, 12 L. C. J. 54.

PROVINCE OF ONTARIO.

IN RE TRUEMAN B. SMITH.

Extradition—Counterfeiting—Forgery.

A prisoner was arrested in Upper Canada for having committed in the United States "the crime of forgery, by forging, coining, &c., spurious silver coin," &c.

Held, (1) That the offence as above charged does not constitute the crime of "forgery" within the meaning of the Extradition Treaty or Act. (2) That it certainly is not the crime of forgery under our law, and therefore the prisoner could not be extradited.

This was an application by a prisoner to be discharged on a writ of *habeas corpus*, on the ground that the charge under which he was in custody was not within the Extradition Treaty or the Act of Canada giving it effect.

The charge or complaint was, that "Smith, at the town of Toledo, —— county, State of Iowa, on or about the 21st March, 1867, did commit the crime of forgery, by forging, coining, counterfeiting, and making spurious silver coin of the stamp and imitation of the silver coin of the United States of America of the denomination of 5 and 10 cent pieces, with implements and materials which he produced for the purpose of carrying on the business of coining such spurious money."

ADAM WILSON, J. The Statute of Canada (cap. 89) applies to the crimes of murder, or assault to commit murder, piracy, arson, robbery, *forgery, or the utterance of forged paper*, committed within the jurisdiction of the United States (see also 24 Vic. c. 6,) and the question is, whether the charge above stated as explained of forging and counterfeiting spurious silver coin, &c., constitutes the offence of forgery within the meaning of the treaty and statute. I am of opinion it does not; it is unquestionably not forgery by our law here; nor from the evidence given can I assume it to be forgery according to the law of the State of Iowa, or of the United States of America, if that would make any difference. The statute declares that the offence charged must be such as would, according to the laws of this province, justify the apprehension and committal for trial of the person accused, if the crime charged had been committed here, so that, if not an offence of the character charged according to our law, the person is not to be apprehended, committed, or delivered over to the foreign government; no comity shall prevail in such a case. *In re* Windsor, 6 New Rep. 96; 10 Cox C. C. 118; 11 Jur. N. S. 807.

Forgery is defined in 4 Bl. Com. 247, to be "the fraudulent making or alteration of a writing to the prejudice of another man's right;" and this is substantially the definition accepted and approved of in *Reg.* v. *Smith*, 1 Dearsley & Bell, 566, in which counsel have arrayed the definitions of different authors of this offence, to which may be added, Bac. Abr. "Forgery."

There is no case where the making of false coin has been determined to be forgery, and it is not so by our statute. Such an offence is here a misdemeanor for the first act, and a felony for the second, but it is not the offence of forgery at all. The decision of *Re Dubois, otherwise Coppin*, 12 Jur. N. S. 867, shows that this is the mode in which the treaty and the statute are to be interpreted, and our own statute reciting the treaty is almost conclusive evidence that the "forgery" referred to is the offence of that name well understood in the United States and in this province; and, to make it plainer, it relates also to "the utterance of forged paper." The prisoner must be discharged.—*L. J., Toronto.*

REPORT OF PARLIAMENTARY COMMITTEE ON BANKRUPTCY.

(*Continued from page* 52.)

With regard to the oath of the Insolvent, whether its efficacy for the desired object be great or otherwise, it is already fully provided for by the Act, in every form. The

Insolvent may be examined on oath at any moment before the Judge, at which examination his creditors may be present, if they think proper, and he may be examined before the Assignee at the first general meeting of his creditors; and again, when he applies either for his discharge, or for its confirmation. The adoption of a form of declaration under oath, which some propose, is an inefficient substitute for an open interrogation, and moreover, too frequently degenerates into a formality which is gone through with as a matter of course.

The policy of treating any act of concealment of property, or any collusion with excessive ranking, as a crime, has found favour in many systems of bankruptcy. In France a fraudulent bankrupt is treated as a criminal, and though the punishment of *banqueroute fraudulense* has been gradually relaxed from the penalty of death, which was once inflicted for being guilty of it, through the perpetual mark of infamy involved in the compulsory wearing of the *bonnet vert*, down to the comparative humanity of the present commercial law of France, yet, in it, the policy of treating and punishing dishonest conduct as a crime, has been retained and preserved.

In England, the Act of 1861 defines eleven specified acts, each of which is made a misdemeanour, punishable by imprisonment for not more than three years. The acts of the bankrupt thus made criminal are such as tend to prevent his own examination; to permit of excessive ranking on his estate; to deprive the creditors of any part of his estate, or of the use of his books of account, and to create unjust preferences.

Even this strictness, however, and the careful definition of crime contained in the statute, have failed, in some classes of cases, to reach the evil sought to be checked; and in the bill recently introduced by Lord Cairns, an attempt is made to improve upon the old statute in one important particular, in which the Act of 1864 is also found insufficient. One of the most prolific sources of complaint against insolvents, both in England and in this country, has been the contracting of debts within a short period of the failure,—the debtor in such cases in fact floating his business forward at the risk and expense of his most recent creditor. Both in England and Canada a remedy was sought against this practice, but in both countries the burden of the proof of fraudulent intent being left upon the creditors, it has been found practically impossible to obtain a conviction, even in the most glaring cases. In the bill introduced by Lord Cairns, it is proposed that the debtor's discharge shall be suspended if he has contracted a debt without a reasonable expectation of being able to pay it; and proof of such reasonable expectation is made to rest on him. It is considered that if a man is in a position indicating a presumption that he had not a reasonable expectation of being able to pay a debt contracted by him, and he contends that such presumption is unfounded, the facts on which he rests are within his own knowledge, and he can have no difficulty in establishing them. If this theory be approved of, it would appear to offer the means of checking and of punishing one of the most numerous of the classes of fraudulent acts charged against insolvent debtors.

In Scotland, the fraudulent bankrupt is reported to the Lord Advocate for prosecution. The Bankrupt Act in force there does not contain definitions of the offences regarded as exposing the debtor to punishment under criminal process, but the principle that the fraudulent debtor should be subjected to such punishment is fully recognized.

In the recent United States Bankrupt Act no provision whatever is made for the punishment of fraud or concealment, otherwise than by the refusal of his discharge. It is possible that a difficulty in enacting such provisions may have occurred in respect of the jurisdiction of the Federal Government to legislate upon offences of that description.

The majority, therefore, of the leading commercial countries regard and punish fraudulent acts by a bankrupt as a crime;

and in the answers received by your committee, there is evidence to show that the absence of more stringent provisions for the punishment of such acts, is regarded as a defect in the Insolvent Act of 1864.

The fourth branch of enquiry, as to the efficiency of the provisions of the Act in respect of the insolvent and of his discharge, has elicited a considerable mass of evidence as to their operation, and numerous suggestions for their improvement.

The discharge of the insolvent may be obtained in three ways:—

First, by the consent thereto of a certain proportion of the creditors.

Second, under a deed of composition and discharge assented to by a similar proportion of creditors.

Third, by an order of the Judge, which may be made at any time after the expiration of a year from the date of the insolvency.

The first and second of these modes of obtaining a discharge are not generally objected to, though some changes are suggested in matters of detail. For instance, it is suggested that it should be made clear that to be considered and computed as a creditor, a claimant should have proved his claim; that no doubt should have been allowed to remain as to the validity of a composition, the payments or some of the payments of which are to be made at a future date, or which is conditional upon such payments being regularly made; that the assignee should be capable of contesting the confirmation of a discharge when authorized to do so by the creditors, and the like. And it is probable that many of these suggestions, being the result of the experience of the writers, may be found useful in remodelling the law.

But as to the third mode of discharging insolvents, great difference of opinion exists, and many objections are made to it. It is urged that the power of discharging the debtor should rest absolutely with the creditors, or with the majority of them required by the Act. That if a debtor has acted honestly and properly, he can always obtain the consent of a sufficient number to discharge him; and that his being unable to do so should be regarded as conclusive evidence of his misconduct. And in fact that the creditors ought in justice to have the right of deciding in the last resort whether their debtor should be discharged or not.

On the other hand, it is said that men are frequently by misfortune alone reduced so low, that their estates cannot pay such a dividend as is expected by creditors; that from feelings of disappointment and mortification alone, creditors will frequently refuse to discharge their debtors; and, moreover, that if they have really valid grounds for doing so, they can place them before the judge, who will thereupon act further in refusing them a discharge.

It would appear from the evidence, that the complaint that the power given to the judge to discharge a debtor, has operated injuriously to the creditors, is not altogether without foundation. The expense which is risked by a creditor who contests the application for discharge, the trouble and labour involved, and the paucity of successful contestations, have no doubt combined to facilitate the granting of many discharges to which the debtor was little entitled. And in proportion as he could hope for a discharge independent of the will of his creditors, the inducements to consider their rights, and to make a complete surrender of his estate would of necessity diminish. But although no doubt the power of the judge to grant a discharge is open to objection, the proposition to leave the debtor entirely in the hands of his creditors is by no means free from difficulty. The theory of every Bankrupt Law involves the discharge of the honest bankrupt in exchange for the free deposition of his entire estate; and it would be directly opposed to this idea to place it in the power of his creditors to strip him of everything, and afterwards to leave him entirely dependent upon their caprice for permission to begin the world anew.

The objection which rests upon the risk and the inconvenience involved in a contestation by a creditor, may be in a great

measure removed by giving power to the creditors to contest at the expense of the estate, either through the assignee or by means of one of their number deputed for the purpose.

The chief difficulty, therefore, appears to lie in deciding upon the extent to which the disapprobation of creditors should be permitted to obstruct the discharge of a debtor, when no breach of the law can be charged against him sufficiently grave to warrant a contest. They might be granted the power of suspending the discharge for a limited time, or of classifying the discharge to be granted as second or third class; such powers to be exercised by means of a writing signed by the same proportion of creditors as is required for the validity of a discharge. As has been suggested, they might have the power in a similar manner of absolutely refusing a discharge.

But while your committee find evidence before them that there should be some modification of the judge's power in respect of discharge, they do not consider that he should be entirely deprived of it, either absolutely or only by the will of the creditors on certain conditions. They consider that nothing less than fraud should deprive the debtor of his right to a discharge, upon the complete surrender of his estate; and that he should not be held to be guilty of fraud, or be made to suffer its penalties, unless the fraudulent act can be described and proved. And in that case it cannot be supposed that the judge would grant a discharge.

There are, however, many cases in which the insolvent has been blameable, but in which his misconduct is not susceptible of exact definition, and therefore could not with propriety be made the subject of penal enactment. Extravagance, overtrading, undue speculation, are all more or less censurable, but it would be difficult to fix the precise limits, beyond which expenditure, trading, or speculation may properly be described by those terms. Probably it is in such cases as these that the disapprobation of creditors might be allowed weight, independent of any formal charge against the insolvent, and that they might be authorized to suspend the insolvent's discharge, or class it as second or third class, or both; leaving, however, similar powers with the judge in the event of a case being made out before him for their exercise.

A further class of suggestions having reference to the insolvent's discharge, tend to an addition of the number of circumstances under which the judge is bound to refuse it, or to refuse its confirmation when granted by the creditors. At present these consist of fraudulent preferences; fraud in procuring the assent of creditors; fraudulent concealment or retention of assets; misconduct on examination; neglect to keep a cash book and other suitable books of account; and refusal of delivery of such books. It is proposed to add to these—the neglect or inability to account for losses, and the non-payment of a dividend exceeding 10s in the pound. It is undoubtedly of much importance that the debtor should so keep his books, as to enable him to show from them in what his losses consisted; and that he should be encouraged to place his estate in the hands of his creditors before he has depleted it by exorbitant discounts, forced sales, and all other modes of depreciation to which a failing trader is subjected. But in the present condition of the country it is, to say the least, doubtful whether there are not numerous country traders who not only do not, but cannot keep systematic books of account, showing accurately their gains and losses during a series of years. And, although the plan of refusing discharges, unless dividends reach a fixed point, has found favour in the United States, and has been embodied in the recent Bankrupt Act there, it has been rejected in England upon the obvious ground that it is not only possible but probable that persons may in many ways be suddenly rendered insolvent, and unable to pay any named dividend, without any fault, and even without any imprudence of their own, while a debtor may so manage

his estate as to pay ten shillings in the pound, and yet may have largely benefitted himself or his friends at the expense of his creditors.

Your Committee, therefore, do not consider that the operation of the law would be improved by the addition of these two grounds to those which now render imperative the refusal of the insolvent's discharge.

There is yet another point connected with the discharge of the insolvent, which has been mentioned in a small number of the answers, and which deserves consideration. It is proposed that the discharge shall not be final, but that the debtor shall always be subject to a further contribution towards his indebtedness to be levied under an order of the judge. This idea has been adopted in framing the Bankrupt Bill now under discussion in England, and appears to be considered an important and advantageous innovation upon the old system. In this view your Committee find it difficult to concur. In Canada the Bankrupt or Insolvent Law has always been regarded, both as a matter of public expediency, and as resulting in individual benefit. It has been thought to be expedient to offer the honest but unfortunate debtor an inducement to remain in the country and recommence his career, rather than force him to seek a new field of action elsewhere. And while this was a matter of interest to the country generally, it was an act of humanity to the debtor and to his family. Your Committee believe that the energies of the debtor would be cramped, the avenues of credit would be closed to him, and neither the public nor the private benefit expected from an Insolvent Law would be attained, if the power of depriving the debtor by operation of law, of any part of his earnings in his new career, were made the condition of his being permitted to enter upon it.

Upon the last subject of enquiry to which the attention of your Committee has been directed, they have to report that a very considerable majority of the answers they have obtained affirm the beneficial character of the Insolvent Act of 1864; and that in that view the persons and institutions of a commercial character from whom answers have been received unanimously concur. The Boards of Trade of the different cities appear to have given the subject very earnest attention, and while they agree in opinion as to the general effect of the law, they have furnished in their answers many of the most valuable of the suggestions which your Committee have had under consideration.

In addition to the more prominent of the suggestions which have been considered by your Committee, many minor points have been brought under their notice by the answers. But they have not thought it necessary to report upon them in detail. The evidence will afford all the requisite particulars of them, and will doubtless be found to contain much information of a character in the highest degree valuable in the preparation of any Bill that may be thought requisite. But the attention of your committee has been forcibly called to two points of very great importance in the operation of any Bankrupt Law which may be enacted in the Dominion, which they submit deserve the earnest consideration of your Honorable House. It has been brought to the knowledge of your committee that persons resident in a Province have obtained discharges from liabilities incurred while trading in that Province, under the English or Scotch Bankrupt Acts, and this, as your committee have been led to believe, without having any real domicile in Britain. And it is stated to be doubtful whether a discharge obtained under an Insolvent law here would relieve the debtor from liabilities incurred in England or Scotland. If these be the actual results of the Bankrupt Laws of the two countries, your committee believe that it is of the utmost importance to take such steps as may be necessary to terminate so anomalous a state of things, and define in a more equitable manner the operation of each law within the ordinary limits of the jurisdiction of the other.

In conclusion, your committee submit

as a summary of the result of their enquiries, that no complete system of Bankruptcy or Insolvency is in force in any of the Provinces, except the Insolvent Act of 1860. That the operation of that Act has been found to be defective in the following respects:—

1. In permitting delay in divesting the debtor of his estate in voluntary assignments; and, when a proceeding was adopted which was not open to this objection, leaving the choice of the assignee to the debtor.

2. In imposing any restriction either dependent on residence or official character (if, in fact, such be its correct interpretation) upon the choice of an assignee by the creditors.

3. In not providing a more convenient means by which the creditors could exercise a constant control of and supervision over the assignee, by means of inspectors, of a supervising committee or otherwise.

4. In requiring too long a period to intervene before real estate can be sold, dividends declared, or meetings of creditors validly held.

5. In not permitting the assignee, with the authority of the creditors, to sell the entire estate of the insolvent in one lot, either for a fixed price, or for a percentage upon the liabilities.

6. In not providing for the punishment of fraudulent acts as crimes.

7. In abridging to too great an extent the power of the creditors over the debtor's discharge.

8. In not granting power to the judge and the creditors to mark disapprobation of the conduct of the debtor by granting a discharge of an inferior class.

9. In not making more ample provision for facilitating compositions, particularly with respect to compositions for time payments.

10. In not authorizing the contestation, at the expense of the estate, of the discharge, or confirmation of the discharge, of a debtor.

11. In several minor details as to procedure, chiefly in the Province of Ontario, which the answers of professional men sufficiently elucidate.

J. J. C. ABBOTT,
Chairman.

BISHOP ON LEGAL STUDY.

FIRST BOOK OF THE LAW, by Joel Prentiss Bishop. Boston: Little, Brown & Co.—This work is intended, as the title indicates, to be placed in the hands of young men who are proposing to adopt the profession of the law. "Its object is," says the author, "first, to enable all young persons to decide for themselves the question, whether the law offers to them the pursuit for life which is best adapted to their natural capacities and tastes; secondly, to teach all, who may choose to read it, something concerning the nature of the law, how it has come to us, what is legal authority, and so on, in order to qualify them the better to discharge the duties of citizens in a free republic; thirdly, and chiefly, to teach the student of the law how to study it, and to furnish him with various incidental helps in the study. It is not written upon the plan of teaching a little law upon every legal topic, therefore of necessity conveying to the mind of the young reader no really correct and perfected image of anything; but its object is to prepare the way for a thorough and profound study of the law, viewed both as a science and an art, in other books."

The plan of Mr. Bishop's book is to a considerable extent original. He endeavors throughout to impress upon the student the importance of *looking and thinking* for himself. "He (the student) should early acquire the habit of determining for himself, whether the particular decisions he reads in the books are *correct*, and their conclusions are the *law*. No greater mistake can be made, than for him to take it for granted, and as of course, that everything he reads in his books, or hears from his preceptor, is to be laid away in his memory as being the law. To make this mistake is to stumble at the outset; and in such a stumbling there is often a fatal fall. It is the great error of the legal edu-

cation of the age. A few days ago, the writer of these pages was in conversation with an old man, whose prime of manhood had been spent in such triumphs at the bar as were the envy and delight of all his juniors and contemporaries, and who for a time occupied with the highest honor a seat upon the supreme bench of his own State; and, the topic turning to this book, he said: "I wish you to tell the young men of this country that they must *think*. The want of thought is the great want of the professional mind in the present age." Sections 105, 6. And again, in section 126: "In all the field of the law, there is nothing which presents to any lawyer, young or old, so good an opportunity for useful enterprise, as *thinking* and *looking*, where the mass of professional men close their eyes and their understandings. It is true that when one suggests a simple thought which had not occurred to another, he receives no *immediate* credit for it; but it strengthens his mind, prepares him for labors following; and, in the end, it pays."

Mr. Bishop would entrust a good deal to the student, even as respects the course of study. In sec. 240, he says: "Again, as to the law school, there are some young men of such mental conformation that they would do best not to enter the school at all. At a school of any kind, there is necessarily a prescribed course of study. And, although it will not harm an intelligent mind to study anything, or to read the law in any order, yet there are some so constituted that they will reach the end more quickly, and with greater advantage to themselves, if they mark out their own course and pursue it. Even the particular advice of an eminent lawyer is not always so good for the student as to follow what the 'judicious' adviser would term his 'own wayward will.' The vast majority of young men do best when led by others, because God has wisely withheld from them the faculty to lead themselves. But to those who are by nature qualified to listen to the divine instinct speaking within, and who are willing to listen and obey, a leader is a great obstruction." In sec. 317, we have a repetition of the same opinion: "It is a great mistake to attempt to help students too much, and in the wrong places. Young men are not machines; they have powers of their own; and, for a young man who is reading law, there is nothing more serviceable than to examine books for himself, and choose out of them such as are adapted to his own needs. Even if he commits an error in this, the harm to him will be of the most profitable kind."

Few readers will be prepared to accept without qualification all that Mr. Bishop says on the subject of leaving the student to choose for himself. Yet, there is no doubt that many a promising student has been injured for life by an attempt to tie himself down to a rigorous and uninterrupted course of study. "Mr. Warren, in his Law Studies, recommends particular books, and extends his lists to great numbers. Mr. Hoffman, the American writer, does the same. A young man," adds Mr. Bishop "even though a rapid reader, must be very extraordinary in every other respect, if, after reading, within the longest time allowed for law studies, all the books mentioned by these writers, he finds any mental power left within him, of any sort whatever." (Sec. 381.)

Mr. Bishop has a good deal to say about reviewers in his book. We cite one rather curious instance. In sec. 494, he refers to the following remark in an article in the American Law Review: "We cannot pass without notice the insufferable practice of spelling 'counsellor'' 'counselor.'" Mr. Bishop remarks: "To most men things of this sort appear as thin as the letter *l* itself; and each lawyer is permitted to have, in peace, his own way about them." But a little further on (sec. 505), Mr. Bishop devotes a whole paragraph to the most elegant mode of abbreviating the name Metcalf—whether it should be written Met. or Metc. "The former," he says, "is sufficiently plain; no one can doubt what it means. And it looks, written or printed, so much better than the latter, that it is now almost universally preferred. Indeed,

the latter of these forms is in very bad taste. A small, low letter, like the letter *c*, should not end an abbreviation, unless there is some special reason for it; and, in particular, it should not do so when the preceding letter is a tall one, like *t*. The reason is simply that it is not in good taste." Now, it might be suggested that there is as much room for the exercise of good taste in orthography as in the proper sequence of small, low, and tall letters; and we hope it is not because it is deemed a matter of indifference that "Council of Law Reporting" is, in the note to section 582, spelt "*Counsel*."

The most valuable part of Mr. Bishop's work, exclusive of the alphabetical list of books at the end, is probably his oft-repeated injunction to the student to think for himself. It is lamentable to observe the confusion of mind into which a student of average mental calibre is thrown by attempting to learn the law by rote. One who follows Mr. Bishop's advice will advance upon safe ground, and the mental strength acquired will enable him to pursue his way with unabated ardour.

RECENT ENGLISH DECISIONS.

Admiralty.—Under a statute giving the Admiralty jurisdiction "over any claim of damage done by any ship," the Admiralty has jurisdiction of a cause of damage for personal injuries done by a ship. — *The Sylph*, Law Rep. 2 Adm. & Ecc. 24.

Award.—A cause and all matters in difference were referred by an order which provided that the costs of the reference should abide the event of the award. The arbitrator decided the cause for the defendant, and with regard to the matters in difference, awarded that the plaintiff had a valid claim against the defendant, and the defendant a valid claim against the plaintiff of larger amount, and directed the plaintiff to pay the defendant the difference. The claims were unliquidated, and could not have been set off against one another in an action. *Held*, that the event of the award was wholly in the defendant's favour, and that he was therefore entitled to the costs.—*Dunhill* v. *Ford*, Law Rep. 3 C. P. 36.

Banker.—Whether by virtue of the relation between banker and customer, any legal duty is imposed on the banker not to disclose his customer's account, except on a reasonable and proper occasion, so as to give a cause of action without special damage, *quære.*—*Hardy* v. *Veasey*, Law Rep. 3 Ex. 107.

Bankruptcy.—A husband covenanted in a deed of separation to pay an annuity to his wife, the annuity to cease in the event of future cohabitation by mutual consent. *Held*, that the value of the annuity was not capable of calculation, and that the annuity was therefore not provable under the Bankrupt Acts. — *Mudge* v. *Rowan*, Law Rep. 3 Ex. 85.

Club.—The rules of a club authorized the committee to call a general meeting, "in case any circumstance should occur likely to endanger the welfare and good order of the club," and provided that any member might be removed by the votes of two-thirds of those present at such meeting. On a bill by a member so removed, praying to be reinstated, *held*, that as, in the judgment of the court, the meeting was fairly called, and the decision was arrived at *bona fide*, and not through caprice, such decision was final, and the court could not interfere.—*Hopkinson* v. *Marquis of Exeter*, Law Rep. 5 Eq. 63.

Conflict of Laws.—On a bill of exchange payable to order, drawn, accepted, and payable in England, the contract of the acceptor is to pay to an order valid by the law of England; and an indorsee can sue the acceptor in England, under an indorsement valid by the law of England, though the indorsement was made in France, and by the law of France gave the indorsee no right to sue in his own name, and though the indorser (who was also drawer and payee) and the indorsee were, at the time the bill was made and indorsed, domiciled and resident in France.—*Lebel* v. *Tucker*, Law. Rep. 3 Q. B. 77.

Contempt.—In a suit for having removed

human bones and portions of the soil from a churchyard to a field belonging to the defendant, the Court of Arches issued a monition, directing the defendant to replace, before a certain day, the bones and earth removed. The defendant failed to comply with the order, alleging that he was unable to do so, because said field was no longer in his occupation or possession. *Held*, that his conduct amounted to contempt of court.—*Adlam* v. *Colthurst*, Law Rep. 2 Adm. & Ecc. 30.

Custom.—One who employs a broker to sell shares for him on the stock exchange or other general market, impliedly authorizes him to deal according to the general and known usages of that market, though he himself be not aware of their existence. But the usage relied on must be proved to exist, and to be so general and notorious, that persons dealing in the market could easily ascertain it, and must be presumed to be aware of it; and, to bind persons not aware of it, it must also appear to be reasonable.—*Grissell* v. *Bristowe*, Law Rep. 3 C. P. 112.

Damages.—Where, on the sale of a chattel, the buyer intends it for a special purpose, but the seller supposes it is for another and more obvious purpose, though the buyer cannot recover, as damages for non-delivery according to the contract, the loss of profit which might have been made from the purpose for which he intended it, he can recover the loss of profit which might have been made from the purpose supposed by the seller, provided he has actually sustained damage to that or a greater amount. —*Cory* v. *Thames Iron Works Co.*, Law Rep. 3 Q. B. 181.

Embezzlement.—A statute provides that it shall be sufficient to allege the embezzlement to be of money, without specifying any particular coin or valuable security, and that such allegation shall be sustained if the offender shall be proved to have embezzled any amount; though the particular species of coin or valuable security of which such amount was composed shall not be proved. *Held*, that, under this statute, an allegation of the embezzlement of money was not sustained by proof that a cheque only had been embezzled, if there was no evidence that the prisoner had cashed it.—*Reg.* v. *Keena*, Law Rep. 1 C. C. 113.

Frauds, Statute of.—On a purchase of flour, J. W., an agent of the defendant, made the following entry in a book belonging to N.: "Mr. N., 32 sacks at 39s., to wait orders. J. W." In an action by N. for non-delivery of the flour, this entry was proved, and it was proved by parol evidence that N. was a baker, and the defendant a flour merchant; and a correspondence subsequent to the purchase was put in, relating to the delivery of the flour by the defendant to N. *Held*, that the entry was a sufficient memorandum to satisfy the Statute of Frauds; for that the parol evidence of the relative trades of the parties was admissible, and, independently of the correspondence, showed that the defendant was the seller, and N. the buyer, of the flour. *Vandenburgh* v. *Spooner*, Law Rep. 1 Ex. 316, considered. —*Newell* v. *Radford*, Law Rep. 3 C. P. 52.

Insurance.—A policy of fire insurance provided that the insurers would not be liable for loss or damage by explosion, "except for such loss or damage as shall arise from explosion by gas." In the insured premises, which were used for the business of extracting oil, an inflammable and explosive vapor, evolved in the process, escaped and caught fire, setting fire to other things; it afterwards exploded, and caused a further fire, besides doing damage by the explosion. *Held*, (1) that "gas" in the policy meant ordinary illuminating gas; (2) that the exemption of liability for loss by explosion was not limited to cases where the fire was originated by the explosion, but included cases where the explosion occurred during a fire, and that the insurers were not liable either for the damage from the explosion, nor for that from the further fire caused by the explosion.—*Stanley* v. *Western Ins. Co.*, Law Rep. 3 Ex. 71.

Malicious Wounding.—A prisoner may be convicted under a statute punishing the malicious "wounding" of cattle, though

the wound was inflicted by the prisoner's hands, without any instrument.—*Regina* v. *Bullock*, Law Rep. 1 C. C. 115.

Production of Documents.—To an action by executors to recover damages for the death of their testator, caused by the alleged negligence of the defendants, the defendants pleaded not guilty, and that the deceased had accepted £75 in discharge of all claims against them. The defendants had sent a clerk and their medical officer to see the deceased, ascertain his state, and negotiate as to the compensation to be made him. *Held*, that the plaintiffs were entitled to have inspection and copies of the reports made to the defendants by these officers of their interviews with the deceased.—*Baker* v. *London and S. W. Railway Co.*, Law Rep. 3 Q. B. 91.

Sale.—The plaintiff sold to the defendants goods, to be paid for in cash or "approved bankers' bills." The defendants paid for them by an "approved banker's bill." The bill was subsequently dishonoured. The defendants were not parties to the bill, and received no notice of dishonour. In an action for the price of the goods, *held*, that the defendants' liability was not more extensive than it would have been had they indorsed the bill, and that they were therefore discharged, not having received due notice of dishonor.—*Smith* v. *Mercer*, Law Rep. 3 Ex. 51.

RECENT AMERICAN DECISIONS.

Agency—Order by Principal to pay Creditor.—If a debtor, having funds in the hands of his agent, verbally orders him to pay a creditor, and the agent promises to execute the order, and the creditor accepts and relies upon the agent's promise, the debtor's power to control so much of the funds as is necessary to redeem such promise is gone.—*Goodwin* v. *Bowden*, 54 Me.

Bailment.—Goods were taken from a carrier by legal process. It was a question whether the parties to whom they were delivered or the bailors were the true owners, although the former were regarded as such by the judge who delivered the opinion. The bailors were promptly notified of the taking. *Held*, a good defence to an action by the bailor.—*Bliven* v. *Hudson* R. R. R. Co., 36 N. Y. 403.

Bills and Notes.—"Due I. H., or order, the sum of $3,928, for value received of him, and settlement up to date. C. V. Meador." *Held*, a promissory note, payable immediately.—*Huyck* v. *Meador*, 24 Ark. 191.

Check.—A check drawn upon a bank for more than the amount of the drawer's funds on deposit, creates no lien upon and gives the payee no right to the actual balance, until the bank has agreed to pay it *pro tanto*—*Dana* v. *Third Nat. Bank in B.*, 13 Allen 445.

Confession.—The prisoner, a slave, made a confession to his master that he had killed another slave at a certain place. Being asked how, he answered, "I cut her throat." After some other questions and answers, his master stopped him, and would not hear any thing more. *Held*, that, as the confession was prevented from being complete, it was not admissible.—*William* v. *State*, 39 Ala. N. S. 532.

Damages.—When a loss of cargo for which the carrier is responsible occurs at the port where it is laden, and before the voyage begins, the carrier is liable for its value at such port. But when the loss happens after the voyage has been begun, he is liable for the value on board ship at the port of delivery, before payment of duties, and less the freight.—*Krohn* v. *Oechs*, 48 Barb. 127.

Factor.—A factor received goods to sell, on which he made advances. Said goods were attached in his hands by creditors of his principal. The value of the goods was falling, and they were afterwards sold by him. *Held*, that the power to sell was not arrested by the attachment, and that the factor was only liable for the excess of the value of the goods, at the time of the sale, over his claims and advances prior to the attachment.—*Baugh* v. *Kirkpatrick*, 54 Penn. St. 84.

Frauds, Statute of.—A party verbally

guaranteed another's debt, at his request, to a third party, who thereupon gave credit to the principal creditor. The guarantor paid the debt when it was due, and claimed the amount from his principal. *Held*, that the Statute of Frauds was no defence. The provision of that statute is for the benefit of the guarantor exclusively. —*Beal* v. *Brown*, 13 Allen 114.

Insurance.—1. An agent authorized to take applications for insurance filled one out for the plaintiff, which the latter had signed in blank. The plaintiff gave all proper information, but the application contained a material misstatement. It was argued that the agent was acting for the assured in filling up the application, and that the defendants were discharged by the false warranty. *Held*, that the defendants were liable.—*Rowley* v. *The Empire Ins. Co.*, 36 N. Y. 550.

2. A common carrier has an insurable interest in goods in his charge to the extent of their value. In case of loss, the measure of damages is the value of the goods at the time of the loss. —*Savage* v. *The Corn Exchange Ins. Co.*, 36 N. Y. 655.

3. The policy of insurance declared on contained a proviso to the effect, that, if any specific parcel of goods should, at the time of the fire, be insured in that or any other office, said policy should "not extend to cover the same, excepting only so far as relates to any excess of value beyond the amount of such specified insurance, which said excess is declared to be under the protection of this policy, and subject to average as aforesaid." Goods covered by said policy were burned, with a loss of $274,192. There was also a specific insurance on said goods to the value of $324,192. This action was brought to recover a *pro rata* amount of the loss in proportion to the amount insured. *Held*, that the defendants were only liable for a loss over and above the amount of the specific insurance.—*Fairchild* v. *Liverpool and L. F. and L. Ins. Co.*, 48 Barb. 420.

4. A policy of insurance contained a condition that, in case of loss, it should be optional with the insurers to rebuild or repair the building, giving notice of their intention so to do within thirty days after having received the preliminary proof of loss. The building insured was burned, and the plaintiff at once began to build a different kind of building from that destroyed. Within the said thirty days, the defendants gave notice of their election to rebuild. The plaintiff refused to allow them to do so, finished the building himself, and sued for the value of the property destroyed. It was argued that plaintiff's said refusal only subjected him to the loss of interest, and that, at most, the defendants could only reduce damages by showing that they could have rebuilt for less than the sum insured. *Held*, that the plaintiff could not recover. The contract by the defendant's election became a contract to build simply, as if there had been no insurance; and the plaintiff had by his own act prevented the defendants from performing it.—*Beals* v. *Home Ins. Co.*, 36 N. Y. 522.

5. The defendants insured the plaintiff on a stock of goods such as are usually kept in country stores. A printed clause in the policy made it void while certain articles, specified as hazardous, were stored on the premises; among others, turpentine and gunpowder. These articles are usually kept in country stores, and were kept by the plaintiff. *Held*, that the defendants were liable. The written clause governed the printed.—*Pindar* v. *King's County F. Ins. Co.*, 36 N. Y. 648.

6. *Suicide by Insane Person.*—The condition in a policy of life insurance, "that in case the insured shall die by his own hand, or in consequence of a duel, or the violation of any state, national or provincial law, or by the hands of justice, this policy shall be null, void and of no effect," does not include suicide by an insane man in a fit of insanity.—*Easterbrook v. Union M. Life Ins. Co.*, 54 Me.

7. A policy of life insurance contained a proviso, that, if the insured should die "in the known violation of any law of these States," said policy should be void. The insured was shot by a person whom he had previously struck. *Held*, that if the blow

amounted to an assault, and the shooting was a part of the same continuous transaction, and took place in consequence of said assault, the policy was void. *By a majority of the Court*, it is not essential that the deceased should have had reason to believe his criminal act might expose his life to danger.—*Cluff* v. *Mutual Benefit Life Ins. Co.*, 13 Allen 308.

Master and Servant.—1. Subordinate servants of a railroad company, injured by the negligence of a servant of superior grade,—*e. g.*, a laborer, injured by the negligence of the superintendent of the road in starting a train at an unusual time,—can recover of said company.—*Haynes* v. *East Tenn. & Ga. R. R.*, 3 Coldwell, 222.

2. A flagman employed by a railroad corporation was an habitual drunkard, and was usually intrusted with the management of a switch, which by the rules of the company it was the duty of another person to manage. These facts were, or by the use of due care might have been, known to the officers of the corporation. The flagman, through intoxication, failed properly to adjust said switch, in consequence of which a fellow-servant was injured. *Held*, that the corporation were liable for the injury, and this, although they employed a special agent to hire and superintend servants, who must have been negligent to have kept the flagman in said employment.—*Gilman* v. *Eastern R. R. Co.*, 13 Allen, 433.

Murder.—Plaintiff in error was a private soldier, and in June, 1865, was detailed by his superior officer as one of a scouting party. A lieutenant and ten men were added to the party on the march. Some of the soldiers of the party shot a man, and the plaintiff in error was indicted and convicted of murder in the second degree. *Held*, that the proof being unsatisfactory that the plaintiff aided or abetted in the unlawful act of killing, his presence did not make him criminally liable. The detail was on its face a lawful order, and the soldier had no right to enquire of the officer the purpose of the detail.—*Riggs* v. *The State*, 3 Coldwell, 85.

Negligence.—1. A child seven years old, while on a railway track, unattended, was killed by a train. *Held*, that this was such negligence on the part of his parents as to prevent a recovery for the death, it not having been caused wilfully.—*Pittsburgh F. W. & C. R. Co.* v. *Vining*, 27 Ind. 513.

2. The deceased was compelled by the conductor of the defendants to stand upon the platform of a crowded car, and while there was thrown from the car by another passenger getting off in haste and carelessly, and was killed. *Held*, that the defendants were liable for his death. The wrongful act of a third party did not excuse the defendants' wrong.—*Sheridan* v. *B. & N. R. R. Co.*, 36 N. Y. 39.

3. A horse-car, with its inside and platform full, was stopped for the plaintiff, who got on and stood upon the steps, there being no room elsewhere. While there he was injured. The conductor had taken his fare. *Held*, that the defendants were liable. The above facts rebutted any presumption of the plaintiff's negligence.—*Clark* v. *Eighth Avenue R. R. Co.* 36 N. Y. 135.

4. Defendants' servant let down the chain which guarded the passage way from a ferry boat to the landing, before the boat was properly secured to the bridge, in consequence of which act the plaintiff's leg was crushed between the boat and the wharf. *Held*, that this was negligence for which defendants were liable.—*Ferris* v. *Union Ferry Co.* 36 N. Y. 312.

Promissory Note.—A promissory note being presented by one bank at another bank where it was made payable, was certified to be good, and was then stamped "paid" by the presenting bank, but on the same day the maker's want of funds being discovered, notice was given to the presenting bank, which, however, declined to cancel the certificate. The certifying bank then paid the amount, took the note and re-presented it at its own counter, had it duly protested and notified the indorsers. *Held*, that the facts did not amount to payment of the note, and the bank was entitled to recover from the indorsers.—*Irving Bank* v. *Wetherald*, 7 Am. L. R. 352.

Telegraph.—1. A telegraphic message was

erroneously transmitted to the plaintiff by the defendant company. The blank on which the original message was written, contained, among other stipulations, one to the effect that the company would not be liable for an error in transmission, unless the message was repeated back from the station to which it was sent, as it might be for half the cost of first sending. The message received by the plaintiff was written on a similar blank, but was not repeated back as aforesaid. The plaintiff brought an action of tort. *Held*, that said stipulation was reasonable, and that, unless the said error would not have been prevented by the repetition of the message, the plaintiff could not recover.—*Ellis* v. *American Telegraphic Co.*, 13 Allen 226.

INTERESTING FEATURES IN RECENT ENGLISH LAW.

I.—It is not, perhaps, generally known to the American Bar with what degree of formal ceremony the different terms of the superior courts are opened, at Westminster Hall. The judges, all in full court dress, small-clothes and dress sword, and *chapeau bras*, and full-bottomed wigs, and the counsel of every grade, from the Queen's Advocate and the Attorney-General, down through the several degrees of sergeants and Queen's Counsel, to the humblest barrister, called to the bar but yesterday, all repair to the dwelling of the Lord Chancellor, to make their respects to the highest judicial dignitary of the realm. After a formal breakfast, near mid-day, in solemn procession, they take possession of the old hall, where the Aula Regis held its sessions almost from the time of the Conqueror. After formal opening of the several courts, an adjournment for the day follows, and all prepare for business on the next morning, at ten o'clock, or earlier if need be. The late Lord Justice Knight Bruce never attended these ceremonious openings of the term, from an invincible aversion to appearing in small-clothes. We conjecture some of his successors are coming to have similar feelings.

It is at Lincoln's Inn, where, after the ceremonious opening of the term by the Lord Chancellor at Westminster Hall, the Courts of Chancery continue their ordinary sessions, and where all chancery causes are heard and determined. It may not be known to all American lawyers, that all the Courts of Chancery, with the exception of that of the Rolls perhaps, are but departments of the Court of Chancery, where the Lord Chancellor's authority is the paramount one. For instance, the three Vice Chancellors are, in contemplation of law, sitting merely as assistants to the Lord Chancellor. So, too, in the Court of Chancery Appeal, which, in point of fact, is generally held by the Lords Justices, the Lord Chancellor may preside and claim the assistance of the two Lords Justices. But in that case the Lords Justices sit in the Lord Chancellor's court-room, having another court-room in which they hear appeals by themselves. The mode in which the point is determined how many of the judges of Chancery Appeal shall sit upon any particular appeal, seems rather singular and unique to all Americans. It seems to depend upon the choice of the appellant. He may carry an appeal from one of the Vice Chancellors, or the Master of the Rolls, to the full Court of Chancery Appeal, when the Lord Chancellor will call to his aid the Lords Justices, to hear the appeal in the Court of Chancery, when the three judges will be present during the hearing and more commonly give judgments *seriatim*. Or if the appellant, in such cases, for any cause, prefer his appeal should be heard by the Lord Chancellor only, he may take it into that Court, to be heard by him alone. So also he may elect to bring his appeal to hearing before the Lords Justices alone, which is the more common course.

Appeals to the House of Lords may be taken direct from the Vice Chancellors, or the Master of the Rolls, or the party may go first, to any one of the Courts of Chancery Appeal, but he cannot appeal from one Court of Chancery Appeal to another, or from the Lord Chancellor, or Lords Justices, to the full Court of Chancery Appeal, or from the Lord Chancellor to the Lords Jus-

tices, or *vice versa*. Each of these Courts, in contemplation of law, being considered identical with the others, and hence it has recently been determined that one Lord Justice may hear appeals, and this is now becoming quite common. The English bar seem to have much less confidence in the number of judges than is common with us.

Appeals are taken too, as is well known, in a very different manner, and with very different effect, in the English Courts of Chancery, from what is allowed in most of the American States. All interlocutory decisions are appealable, and the proceedings in the case are not necessarily thereby interrupted. In theory, in a chancery cause pending before one of the Vice Chancellors, or the Master of the Rolls, an interlocutory decision may be appealed to the Lord Chancellor, or the Court of Chancery Appeal, and may be thus progressing, while the cause itself is at the same time making progress in the original court. And at the same time another interlocutory decision may be appealed direct to the House of Lords, and may be there on trial, while other portions of the cause may be on trial in two or more different courts. But this is not the usual course perhaps. This is accounted for partly by the fact that different members of the Chancery bar practise in different courts, and it is not unusual to have a cause argued in different courts by entirely different counsel; but this is by no means always the case. Senior counsel of eminence, like Sir Roundell Palmer, more commonly follow an important cause through all its stages—and by consequence the proceedings in the court below are more commonly stayed by consent, during the pendency of the appeal.

II.—Some very important questions have, within the last few weeks, come before the superior courts in Westminster Hall and Lincoln's Inn. The astonishing discoveries, in regard to railway management, or, perhaps more properly, mismanagement, within the last few months, have brought out the question of the right of the directors to declare and pay dividends, out of anything but the net earnings of the company.

In countries where joint stock companies are owned to a considerable extent by mere speculators and adventurers, it would be not unnatural to expect, that the shareholders would more readily acquiesce in having dividends paid out of capital—and even out of capital borrowed for the express purpose—than in countries where such stocks are held, to a large extent, by those who desire to retain them, as a means of investment, and for permanent income. In the latter case, and this seems the only view with which any such stock could fairly be created—it would at once destroy the credit of the stocks and defeat the just object of their creation, if dividends, to even the slightest extent, were permitted to be paid out of capital, whether borrowed for the occasion or not. There cannot be a practice more disingenuous, or fraudulent in its character, than this. If permitted in any case, or to the slightest extent, it would at once subvert the entire system of fair dealing, in the shares of joint stock companies. So far has this cardinal principle of finance been carried, that any State, or government, which allows the interest upon its capital, or funded debt, to be paid by new loans—which is but another name for new capital—will at once lose credit; and cannot expect the confidence of capitalists to be continued under such a practice.

But this practice in the case of a government, or State, might be justified under some special crisis or emergency. For the payment of interest, in such cases, is not so exactly the measure of the resources of the debtor, as in the case of a joint stock company. The State, or government, in one sense possesses unlimited resources—or such as are measured only by the productive industry of all its inhabitants. In this case the fact of paying interest by new loans, is only a symptom of bad management and thoughtlessness; or of unwillingness to impose the just weight of the due and exact responsibility and current cost of the government upon the resources of the State. And the opposite course, of raising current interest annually, is indispensable as an undoubted expression of willingness, on the part of the State, in its aggregate capacity,

to meet its just responsibility, in the present tense.

But in the case of a joint stock company, the resources of the company are of necessity limited, and can only be measured by the sole and unerring standard of its net earnings, that is, the income remaining over and above all outgoes. If the directors are allowed, under any pretence or excuse, to tamper with this cardinal measure of character, there is no longer any standard or measure of character remaining. The payment of dividends and interest upon its capital, whether in shares—ordinary or preferred—or in bond and mortgage, or in any other form, is as indispensable to determine the success or failure of joint stock companies, as the prompt meeting of one's promises is with a natural person. And, while the flexible morality of trade allows some discretion to the unfortunate dealer, in calling in the temporary aid of friends, in order to defer the inevitable day of ultimate failure, or, if possible, to help escape from its disheartening disaster, no such discretion is, or can be, allowed to the managers and directors of a joint stock company, like a railway.

There are, unquestionably, some uncertainties in regard to railway management, whereby it becomes difficult, if not impracticable, in all cases, to know precisely how much to charge to current expenses. The repair and renewal of permanent structures —like the roadway, bridges, and, to some extent, stations and machine shops, which are constantly deteriorating, and must ultimately be renewed by an outlay far beyond the cost of ordinary repairs, calculated on the most liberal scale—these and some other perplexities and uncertainties, naturally attending railway management, in the most competent and watchful hands, will always plead for some allowance for occasional failures and shortcomings. But beyond this there is an invariable and inflexible rule of railway management, from which the English courts will allow no departure.

In a recent case before Vice Chancellor Wood, where the minority of shareholders sought for an injunction, restraining the directors and other shareholders, in whose interest they were acting, from borrowing money on a temporary loan, or applying money already borrowed, to the purposes of paying the regular semi-annual dividends upon the shares, in advance of realizing some suspended sources of income, the learned judge granted the injunction without hesitation. And the principle is so unquestionable that an appeal would offer no reasonable hope of obtaining any modification of the order, and was not attempted, we believe.

But we fear there has been a very great amount of railway management, both in England and America, which would be found, on careful examination, far more flagrant than this. It is to be feared that, in the great majority of instances, dividends have been paid, without any very strict regard to the precise rule of measuring them by the exact amount of net earnings. And that if any surplus has been laid by for extraordinary expenditures, it has been sometimes for the very questionable purpose of "legislative expenses," which, if not wholly illegal and inadmissible, were clearly so, when carried to the enormous extent, and for the questionable objects, which too many recent developments indicate. And in other cases dividends have been paid, out of borrowed capital, for the mere purpose of misrepresenting the real state of the productiveness of the business, when afterward it was found that the disclosure of the exact facts of the case must seriously have reduced the price of the shares in the market, thus in effect making the directors accessory to the false representations under which the stock would be or might have been offered for sale. Such conduct, while it might be quite innocent on the part of sellers, is scarcely less than felonious on the part of the directors, and should be visited with condign punishment.

We have been accustomed to commend the fairness and faithfulness of English railway management, but it now appears that rust and rottenness have been gathering at the heart of it for many years, and

that it is, if possible, even more hollow and fallacious than in our own country. And it has been done so covertly and under the guise of such fair pretensions, that it has misled even the most wary. It seems baser, if possible, for one whose reputation stands at the highest point, to abuse this accumulated capital of credit and fair repute to the accomplishment of some nefarious scheme of iniquity, than for one who is new in the market, and has only his fair promises to draw upon, to attempt the same thing. And it is certain the former will be much more sure of success than the latter. It is this which seems to create such fierce indignation against almost all the English railway directors just at the present moment. For as one after another comes to be probed, the same disgusting rottenness at the core is brought to light, so that, at present, there is really no firm ground to stand upon, so far as the credit of railway capital is concerned. It is to be hoped we shall profit by the example of our English cousins, and while we imitate their excellences, avoid their errors.

III.—The trial of the case Wason *v.* Walter, before the Lord Chief Justice of England and a special jury, at the sittings after Michaelmas Term, was one of considerable interest to the proprietors of the press. The defendant is the proprietor of the Times newspaper, the chief organ of popular sentiment in England, which, like one leading paper in America, is always sure to echo popular sentiment, if sufficiently developed to be comprehended. The plaintiff is a member of the English bar, and a former member of Parliament from one of the country constituencies, where the election thirty or more years ago, was contested by Sir Fitzroy Kelly, the present Chief Baron of the Court of Exchequer. At the time of his promotion to the bench, his former competitor saw fit to present a petition to Parliament against the appointment, charging that Sir Fitzroy Kelly, in some trial before a committee of the House of Commons, had been guilty of perjury, in denying all knowledge of acquaintance with one person, who had canvassed for him during the election, and in doing so had been guilty of bribery—on which ground the return had been avoided. But the charge was promptly met by the Lord Chancellor and Lord St. Leonards, who effectually vindicated the Lord Chief Baron from all suspicion of guilt, on account of the charge, showing, beyond all question, that the charge had been preferred, and clearly refuted, at or near the time the offence was said to have been committed, and that Mr. Wason had remained silent during all the previous stages of the learned Baron's promotion to be solicitor and attorney-general, until his call to the bench; and that the charge was now brought forward at a time and under circumstances, as it was claimed by these noble Lords, clearly indicating some wrong motive, and stating many facts and circumstances in confirmation of their views, which Mr. Wason naturally regarded as libellous.

But as members of the House of Lords were privileged for all words spoken in debate, the aggravated party could obtain no redress in that quarter. But as the Times had published detailed reports of the speeches made by the noble Lords, and had inserted also leading editorial articles, extensively discussing the same grounds of defence against Mr. Wason's charges, and repeating, to a considerable extent, the charges which Mr. Wason regarded as libellous, he very naturally sought redress against the proprietor of the Times, to whom he did not suppose the privilege of Parliament could extend; or if by possibility it might be claimed to extend thus far, for any purpose, he expected it would, at all events, not be carried beyond that of giving a report of the actual proceedings in that body. What then must have been his disappointment, not to say consternation, to hear and feel the learned Chief Justice hewing down and cutting away the very last timber in the platform upon which he felt that he stood so securely. One cannot help feeling a certain degree of sympathy, if not of actual commiseration, for the sad condition in which the plaintiff thus unexpectedly found himself. And it seems, so

far as we can judge from the newspaper reports of the case, to have operated so severely upon the plaintiff, at the time, as nearly to deprive him of that iron, not to say leaden, self-possession, which he preserved so imperturbably, until that critical moment—when all he could utter was, that he did not expect his Lordship to have given the jury any such charge, and he trusted it would not be regarded as disrespectful or out of place that he should take exception to the same, and ask to have it revised, in banc.

But here, again, the redoubtable suitor, who seemed to have verified the truth of the maxim, applied to counsel who conduct their own causes, was so seriously embarrassed by the peculiar juncture of affairs, that he failed to make up any bill of exceptions to the charge (as given), which could fairly be construed as any objection to its most damaging and destructive current. For, after the learned judge had utterly demolished the entire superstructure of the plaintiff's case, the jury, instead of retiring and remaining out a reasonable time, so as to show at least some compunctious regrets at the utter lawlessness of the liberties accorded by the learned judge to the press—not only in the matter of parliamentary reports, but of commentaries thereon, however damaging or offensive to personal pride and self-respect: instead of this only decent regard for the plaintiff's embarrassed position, the jury did not retire at all, but after a deliberation of less than two minutes announced themselves as ready to give a verdict in the case, for the defendants, of course. All this transpired in less time than is required to write it, and long before the plaintiff had sufficiently recovered from his very natural surprise, not to say horror, at the perplexing circumstances by which he found himself surrounded.

And now, to cap the climax of his embarrassment, the noble and distinguished Lord Chief Justice of all England, instead of allowing the perplexed suitor time to recover himself, and draw up formal and effective exceptions to the terrific charge, required it to be done, *instanter*, and before the verdict should be delivered. This was, indeed, to require a man to go through the detail of a dress parade, not only in the face of the enemy, but at the very mouth of a battery of cannon, from whose fatal and destructive discharge there could be no escape, either by advance or retreat. What wonder, then, that the exceptions should be found fatally defective?

This is the more to be regretted, since the men of the press, although well satisfied to find in the chief judicial officer of the common-law bench of England so decided and unwavering a champion, would certainly feel more sure of their ground if the question had been so placed upon the record as to enable the defeated party to carry it to the court of last resort. And it is even now competent for the learned judge to certify the main features of the charge, for revision by his brothers of the same court, where, if regarded as involving serious doubt, it would be sure to be ordered into the Court of Exchequer Chamber, and might readily be brought to the House of Lords, for final indorsement or reversal.

The main features of the charge were: That any publisher of a daily paper, or any other publisher, was justified in giving fair and faithful reports of the proceedings and debates in either house of Parliament, and that no action of libel could be maintained for anything contained in such report, provided it were honestly and fairly put forth, for the *bona fide* purpose of giving information of what passed in Parliament. And that, as to leading articles, newspaper publishers had, to a certain extent, privilege of discussing such public questions as they might fairly consider the public felt an interest in hearing discussed; and in doing so they might put forth such views and maintain such con-tructions as they deem just and right, and that they were not responsible for the entire and absolute truth and justice of all they might utter, provided they acted in good faith and without malice.

In the present case, the defendants hav-

ing pleaded the general issue, and there being nothing before the court to show the truth of all the matters of fact contained either in the report of what passed in the House of Lords, or in the defendant's comments in his leading articles thereon, it must be assumed that any portion of the same which was libellous might also be false. It could only therefore be justified upon the ground that the defendant's privilege extended to the publication of all which passed in Parliament, and to such comments thereon and such repetition and amplification of such charges as come fairly within the scope of an editor and publisher, actuated by the honest and *bona fide* purpose of instructing and informing the public in regard to such matters of public concern as he may properly consider that they have a *bona fide* interest in correctly understanding, provided he be actuated solely by the motive of rendering his paper a fair and faithful instructor in regard to and commentator upon such matters, and not by any sinister and malicious motive toward those thereby exposed to opprobrium. This is, indeed, a very broad shield, a privilege scarcely less than that of the member of parliament. But we do not well see how it could be much narrowed, without restricting it within such limits as to render the privilege of no avail. It is well, perhaps, that the freedom of the press should cover all matters of public concern, where the publisher is actuated solely by a desire correctly to instruct the public mind, and by no spice of personal malice.—*Letter of Judge Redfield in American Law Register.*

LORD BROUGHAM.

This distinguished jurist, statesman and author, died on the 7th of May, at the advanced age of 89. The following sketch of his career is from the *Pall Mall Gazette*:—

"The services, which for five and twenty indefatigable years Henry Brougham rendered to the popular cause, to liberal ideas, and to beneficial reforms, were signal enough to cover a multitude of sins, if, as some insist, there were a multitude of sins to cover. He had some failings, no doubt, which on one or two notable occasions led him far astray—failings unworthy of his vast powers and noble qualities; failings which, in a fair estimate of his character, it is impossible to pass over in silence. His temperament, like his oratory, was vehement, impetuous and passionate; his vanity and ambition were alike insatiable; his *amour propre* was terribly irritable; he could never forgive a slight, seldom even opposition or thwarting where successful, seldomer still, it is said, the triumph or precedence of a fortunate rival, even when that rival was a friend. His animosities were as fierce as his affections were warm and strong; there was at times something sadly rancorous in his enmity. Indeed, everything about him bore the impress of that tendency towards the violent, the excessive, the unmeasured, which was his predominant constitutional characteristic. There was, in truth, something volcanic in his nature; there was a dangerous look about the man, indicative of a central fire ever smouldering within, and liable to break out, as it not unfrequently did, at unseasonable moments, and in unseemly shapes. It was once keenly said of him, 'If he was a horse with that eye, nobody would buy him.' His prudence was often at fault; his self-command sometimes. Hence it was, that even at the height of his power and popularity, and when he was almost the idol of the people, his colleagues never felt quite sure of him, or quite at ease with him; they mistrusted his judgment; they dreaded his mental and moral intemperance; they recognized something untrustworthy and incalculable in that fierce and susceptible temper. He was like one of the explosive forces in nature, mighty and almost resistless, but containing within itself unknown possibilities of mischief. He inspired no enduring or reposing confidence. Indeed, he kept every one who had to deal with him in perpetual hot water,—the attorneys who entrusted to him their clients' causes, the party with whom he acted, adorned and strengthened, and for a time led, in Parlia-

ment, and the colleagues who sat with him in the Cabinet. For some reason of this sort, doubtless sufficient, but never fully explained, when the Whig Government was reconstituted after its summary dismissal in 1834, he was not asked to rejoin it, or to re-assume his old position as Lord Chancellor,—a slight which he felt acutely and deeply resented.

The truly glorious and productive period of Henry Brougham's life, the only period which we are specially concerned to remember, was that which elapsed between 1810 and 1834. Before the first of those years, he was chiefly occupied in preparing for and attaining that forensic and literary celebrity and power of which he afterwards made so brilliant a use. After the last of those years much occurred which we would fain forget. But for four and twenty years he was indefatigable in useful works. He was foremost in every beneficial and honorable struggle; and it was then he earned that indefeasible title to the gratitude of his country, which no after lapse or frailty can efface. Those were gloomy days for the Whig party and the liberal cause; every battle was an uphill fight against superior forces; every advantage won for good government or popular rights was painfully and slowly wrung from the reluctant grasp of ascendant and often very stupid Toryism. In 1810, Henry Brougham entered Parliament for the borough of Camelford, having already attained a considerable position on the Northern Circuit, of which he afterwards became the leader. He first distinguished himself by procuring the repeal of those suicidal 'Orders in Council' by which our Government sought to retaliate on Bonaparte for the Milan and Berlin decrees, which he had launched in the hope of crippling British commerce. He took a prominent part in all debates upon the corn laws, and always, of course, on the right side. Some of his finest speeches were made on the question of Catholic emancipation. On all party topics he was, perhaps, the most powerful combatant in the Whig ranks; and his magnificent defence of Queen Caroline (in which he showed extraordinary tact and sagacity, as well as eloquence and courage) raised him at once to the summit of popularity. But the marked feature of his parliamentary career, and that which most needs and deserves to be brought out into strong relief, was that his chief attention and devotion were given, not to those great party contests which afforded the best opportunities for the display of such brilliant powers as he excelled in, and which therefore might naturally have been most attractive to one so gifted and so vain, but to those questions, many of them till then almost neglected, which most deeply concerned the improvement and the elevation of his poorer countrymen, which involved much dry and obscure labor, and in which practical success was the only reward to be looked for. He preferred philanthropy to mere politics; he chose useful and urgent, rather than showy topics. We believe he was inspired, in his unresting toil, by a genuine passion for the well-being of his fellow-men; and his spirit boiled over at the sight of cruelty and oppression. Of all the anti-slavery orators, he was about the most indefatigable and indignant. He contributed, perhaps, as much as any man of his day, even Lord John Russell, to sweep the last vestiges of religious persecution from the statute book. His services in the great cause of parliamentary reform are still fresh in the memory of all of us. His efforts in regard to Chancery and general law reform, though it has been the fashion to speak slightingly of them, and though probably his mastery of the subject was by no means thorough, nor his view always sound, have, beyond all question, been among the most effectual aids to the very considerable amendments that have been made in that direction; and though his judgments as Lord Chancellor were not always regarded with confidence or acquiescence, he was able to say, when he left the woolsack, what probably not one of his predecessors could have said, that 'he had not left a single appeal unheard, or a single letter unanswered.'"

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THE JUDICIAL APPOINTMENTS.

It is with no ordinary feeling of gratification that we take up the pen to chronicle the appointment of Mr. R. MACKAY, Q.C., and Mr. F. W. TORRANCE, Q.C., to the Bench of the Superior Court. These appointments excited surprise by their very excellence. At a time when the fair fame of the Bench was under a cloud, the elevation of two gentlemen eminently qualified for the office was a thing to be specially desired. The Minister of Justice, in passing by the ranks of mere political adherents, and selecting two gentlemen of great ability, of independent position, sincerely devoted to their profession, profoundly versed in legal science, has entitled himself to the gratitude of the bar. We do not fear to be hereafter called false prophets, in forecasting a noble career for these two judges.

Mr. Justice MACKAY was admitted to the bar on the 20th of December, 1837. He was engaged as counsel before the Seignorial Commission in 1855; and it is unnecessary to add that he has long enjoyed the reputation of a profound lawyer, an ardent student, and a counsel of the highest rank. His *confrères* have testified their high regard by electing him Bâtonnier. His honor never took any active part in political affairs, and did not receive the silk gown till last year. Some of Mr. Justice MACKAY's early contributions to legal literature will be found in the *Revue de Législation et de Jurisprudence*.

Mr. Justice TORRANCE was admitted to the bar on the 26th of June, 1848, and is still young in years. Few, however, have pursued the study of their profession with such constant diligence and singleness of purpose. Mr. Justice TORRANCE has, we believe, filled the chair of Roman Law in the Law faculty of the McGill University since the Faculty was established, and has also during twelve laborious years been one of the most active contributors to the *Jurist*. He received the appointment of Q.C. at the same time as Mr. Justice MACKAY.

We do not speak at greater length respecting these appointments, because we feel assured that eulogy, however well merited, would be distasteful to the gentlemen concerned; and we are, moreover, aware that we are chiefly addressing those to whom the eminent qualifications of the new judges are perfectly well known.

Of Mr. Justice MONK, who has been translated to the Court of Appeals, it may be said that he has rendered many of the most admirable and best considered judgments ever pronounced in our Courts, and also, perhaps, some of the worst. Possessed of abilities far above the common, of imposing personal appearance, a scholar of some depth and versatility, administering justice with rare good temper blended with dignity—Mr. Justice MONK has been a highly popular judge, notwithstanding the drawback of occasional fits of carelessness. In the dignified leisure of the Queen's Bench, his honor will have more opportunity for the elaboration of judgments, such as have often attracted admiration, even when drawn up by him amid the hurry of the Court below. We look for higher things yet from Mr. Justice MONK, and we feel sure that we shall not be disappointed. To fill worthily the chair of Mr. Justice AYLWIN, one of the greatest of Canadian judges, would be an honor not to be lightly esteemed.

THE GENERAL COUNCIL.

We have on our table a pamphlet containing the official reports of the General Council of the Bar of Lower Canada. We see reference therein to an amended tariff for the Superior and Circuit Courts, which, we trust, will soon be promulgated. By some oversight, we omitted to notice in a previous issue that on the retirement of Mr. GONZALVE DOUTRE from the office of Secretary-Treasurer of the General Council, he received the honor of a highly eulo-

gistic resolution, by the Bâtonniers present at a meeting on the 30th of May, conveying to him the thanks of the Council for his laborious and gratuitous services. Mr. DOUTRE was also presented with a silver inkstand, and a copy of the resolution engrossed on parchment. We have already more than once referred to Mr. DOUTRE'S extraordinary services to the profession—services continued with unabated ardor even when confined to his room by severe illness. We feel no little gratification, therefore, in announcing that his *confrères* have conferred upon him this mark of esteem. One of Mr. DOUTRE'S latest labors is contained in the pamphlet before us, comprising the *Règles de la Profession d'Avocat*, one hundred and sixteen in number. On these Mr. DOUTRE remarks, "Sans vouloir imposer le travail que j'ai fait à ce sujet, je le soumets comme pouvant servir de guide à l'avenir. Chaque application que les Conseils de Section feront d'une de ces règles servira à la confirmer. C'est ainsi que les règles de la profession d'avocat en France ont été confirmées une par une par l'usage et les sentences rendues par les Conseils de Section." Mr. DOUTRE has been succeeded in the office of Secretary-Treasurer of the General Council by Mr. ARCHAMBAULT.

THE JUDGE'S OATH.

The form of oath administered to a *Puisné* Judge on his appointment, which we append, may be of interest to our readers. The words date back to the time of 18 Edward III., A.D. 1344, and may be found in Evans' Collection of Statutes, vol. iii, pp. 7, 8.

"Ye shall swear, That well and lawfully ye shall serve our Lady the Queen and her people in the office of Puisné Judge of Her Majesty's Superior Court for Lower Canada, and that lawfully ye shall counsel the Queen in her business, and that ye shall not counsel nor assent to anything which may turn her in damage or disherison by any manner, way, or court: And that ye shall not know the damage or disherison of her, whereof ye shall not cause her to be warned by yourself, or by other; and that ye shall do equal law, and execution of right, to all her subjects, rich and poor, without having regard to any person: And that ye take not by yourself, or by other, privily nor apertly, gift nor reward of gold nor silver, nor of any other thing which may turn to your profit, unless it be meat or drink, and that of small value, of any man that shall have any plea or process hanging before you, as long as the same process shall be so hanging, nor after for the same cause: And that ye take no fee as long as ye shall be such Puisne Judge of the said Superior Court, nor robes of any man, great or small, but of the Queen herself: And that ye give none advice or counsel to no man, great nor small, in no case where the Queen is party; And in case that any, of what estate or condition they be, come before you in your sessions with force and arms or otherwise against the peace, or against the form of the statute thereof made, to disturb execution of the common law, or to menace the people that they may not pursue the law, that ye shall cause their bodies to be arrested and put in prison; and in case they be such that ye cannot arrest them, that ye certify the Queen of their names, and of their misprision hastily, so that she may thereof ordain a covenable remedy: And that ye by yourself nor by other, privily nor apertly, maintain any plea or quarrel hanging in the Queen's Court, or elsewhere in the country: And that ye deny to no man common right by the Queen's Letters, nor none other man's, nor for none other cause; and in case any Letters come to you contrary to the law, that ye do nothing by such letters, but certify the Queen thereof, and proceed to execute the law, notwithstanding the same letters: And that ye shall do and procure the profit of the Queen, and of her Crown, with all things where ye may reasonably do the same: And in case ye be from henceforth found in default in any of the points aforesaid, ye shall be at the Queen's will of body, lands, and goods, thereof to be done as shall please her, as God you help and all Saints."

The old French version is as follows:

"Vous jurez, que bien & loialment servires a nostre Seignur le Roy et son poeple en loffice de Justice, et que loialment conseilleres nostre Seignur le Roy en sez besoignes. Et que vous ne conseilleres ne assentires a chose que luy purra tourner en damage ou desheriteson per queconque voye ou colour. Et que vous ferrez owel ley et execution de droit as toutez ses subgettez riches et povrez sauns avoir regard a quelconque person. Et que vous ne prendrez per vous ne per autre en prive nen apert don ne reward dor ne dargent ne dautre chose queconque, que a vostre profit pourra tournir, sil ne soit manger ou boire & ceo de petit value, de nul home qui avera plee ou proces pendaunt devaunt vous, taunt come cel proces serra issint pendant, ne apres pur cel cause. Et que vous ne prendres fee, tanque come vous serres Justice, ne robes de nul home graunde ne petit, si non de Roy mesmes. Et qe vous ne dirrez counseil ne avyz a nulle graunde ne petit, en nul cas ou le Roy est partie. Et en cas que ascuns de quel estate ou condition quils soient, veignent devant vous en vos sessions a force & armes ou autrement contre la peas, ou contre la forme del estatut ent fait, pur distourber execution del commune ley, ou pur manascer ley gentz que ils ne purraient pursuir la ley, qe vous ferrez arrester lour corps, & mettre en prison. Et en cas quils soient tielx que vous ne lez poez arrester, qe vous certifies le Roy de lour nouns & de lour misprision hastivement, issint qe il puisse ent ordeigner remedie covenable. Et que vous ne maintiendres, per vous ne per autre en prive nen apert, nul plee ne nul querele pendant en le court le Roy naillours en paiis. Et qe vous ne declarez a nully come droit per lettres du Roy ne de nully autre ne per autre cause queconque. Et en cas que ascuns lettres vous veignent contrariez a la ley, que vous ne ferres riens per tielx lettres, eyens certifies le Roy de ceo, & irrez avaunt, pur faire la ley, nient contresteantz mesmes les lettres. Et que vous ferres & procures le profit du Roy & de sa corone ove toutes les choses ou vous le purres faire resonablement. Et en cas que vous soies trove en defaute desorenevant en nul des pointes avant ditz, vous serres en la volunte du Roi du corpz terres & davoir, de faire eut que luy plerra. Si Dieu vous eide & toutes seyntes."

This was the form recently used here in swearing in the new Judges of the Superior Court, of course, omitting the last three words.

RETENTION OF MONEYS BY INSOLVENTS.

A decision, *In Re Warmington*, rendered by Mr. Justice TORRANCE on the 30th of September, will, we believe, have an excellent effect. One Warmington gave the usual notice of a meeting of creditors to appoint an assignee, and before the meeting took place he received, in the course of business, a sum of $176, a part of which ($143) he refused to pay over to the assignee, when one had been appointed. It was admitted that he had received this sum, but the insolvent pretended that because he had received it before the appointment of the assignee, he was not bound to pay it over. This pretension was, of course, summarily set aside by the learned judge, and the bankrupt ordered to pay over the money on pain of imprisonment.

MEETINGS OF CREDITORS UNDER THE INSOLVENT ACT.

A point of some interest under the Insolvent Act has been decided by Mr. Justice TORRANCE, *In Re Andrew Macfarlane*. The question was whether the proceedings of an adjourned meeting of creditors under the Insolvent Act were legal. The original meeting had been convened in due form by the notices required by the Act, but these notices had not been repeated previous to the adjourned meeting. Mr. Justice TORRANCE, on the 30th September, sustained the validity of the proceedings.

ASSIGNMENT BY PARTNERSHIP.

The question whether an assignment by a firm gives the assignee possession of the

individual estates of the copartners, has been decided in the affirmative by Mr. Justice TORRANCE, *In Re Macfarlane et al.* The firm of insolvents made an assignment to A. B. Stewart, of all their estate and effects of every nature and kind whatsoever. Subsequently each of the partners assigned to the same assignee his separate estate. The assignee being afterwards removed from office at a meeting of creditors called for the ordering of the affairs of the estate generally, refused to give over to the new assignee the separate estate of one of the insolvents. His contention was that the first assignment to him by the firm did not vest in him the separate and individual estates of the copartners; that it was only under the subsequent assignments that he was vested with possession of the separate estates, and therefore his removal by a general meeting of the creditors of the copartnership took effect only with respect to the partnership estate. The learned judge, in a judgment pronounced the 8th of October, held that the assignment by the firm vested in the assignee the separate and individual estates of the partners as well as the copartnership estate; that the subsequent assignments had no legal effect, and therefore that the removal of the assignee by the creditors of the copartnership took effect with respect to the separate estates of the partners as well as the copartnership estate.

THE LATE CHIEF JUSTICE STUART'S LIBRARY.

The sale of the valuable library of the late Sir James Stuart, commenced at Montreal on the 20th of October, and was continued during eight days. Fifteen years have elapsed since the death of this eminent judge, and to some extent the books were out of date, especially the editions of American and English text books. The collection, however, embraced a great number of very valuable works, and the prices realized were on the whole satisfactory, several institutions becoming purchasers to a large amount.

APPOINTMENTS.

(*Gazetted, 27th August*, 1868.)

The Hon. SAMUEL CORNWALLIS MONK, one of the Puisné Judges of the Superior Court for Lower Canada, now the Province of Quebec, to be a Puisné Judge of the Court of Queen's Bench for Lower Canada, now the Province of Quebec, in the place of the Hon. THOMAS CUSHING AYLWIN, resigned.

ROBERT MACKAY, Esquire, one of Her Majesty's Counsel learned in the Law, to be a Puisné Judge of the Superior Court for Lower Canada, now the Province of Quebec, in the place of the Hon. JAMES SMITH, resigned.

FREDERICK WILLIAM TORRANCE, Esquire, one of Her Majesty's Counsel learned in the Law, to be a Puisné Judge of the Superior Court for Lower Canada, now the Province of Quebec, in the place of the Hon. SAMUEL CORNWALLIS MONK, appointed a Judge of the Court of Queen's Bench.

JOHN MAGUIRE, Esquire, Advocate, and Judge of the Sessions of the Peace, at Quebec, to be a Puisné Judge of the Superior Court for Lower Canada, now the Province of Quebec, in the place of the Hon. JOHN GAWLER THOMPSON, resigned.

(*Gazetted, 3rd October*, 1868.)

The Hon. CHARLES FISHER, of Fredericton, in the Province of New Brunswick, to be a Judge of the Supreme Court of New Brunswick, in the room and stead of the Hon. LEMUEL ALLEN WILMOT, resigned.

QUEBEC.

(*Gazetted, 28th September*, 1868.)

PIERRE ANTOINE DOUCET, Esq., to be Judge of the Sessions of the Peace for the City of Quebec, in the room of the Hon. JOHN MAGUIRE, appointed Judge of the Superior Court.

HENRI ELZEAR TASCHEREAU, Esq., Advocate and Queen's Counsel, to be Clerk of the Peace for the District of Quebec.

WILLIAM EDMUND DUGGAN, Esq., to be Clerk of the Crown for the District of Quebec.

(*Gazetted, 30th September*, 1868.)

LOUIS CHARLES BOUCHER DENIVERVILLE,

Esq., Queen's Counsel, to be Sheriff of the District of Three Rivers, in the place of Isaac G. Ogden, Esq., deceased.

THE MONTREAL COURTS.

The new judges have entered upon their duties with great vigor, and a marked improvement in the administration of justice is already apparent. The heavy arrears before the Court of Review are being cleared off by extra sittings, and last term Mr. Justice TORRANCE sat in a separate room to facilitate the *enquête* in appealable circuit cases.

EDITORIAL CHANGE.

The elevation of Mr. TORRANCE, Q. C., to the Bench of the Superior Court having occasioned a vacancy in the Editorial Committee of the *Lower Canada Jurist*, the Editor of this journal has received the honor of an invitation to fill the office of junior editor of that publication, which has been accepted. This circumstance will occasion no change in the management of the *Law Journal* at present. The editor's reports will appear principally in the *Jurist*, but, as we have before intimated, we believe there is sufficient matter, independent of local reports, to give interest to a quarterly review like the *Law Journal*.

NOTICES OF PUBLICATIONS.

THE AMERICAN LAW REVIEW, (Boston) for October, contains a very interesting and well written review of the life and career of the late Lord Brougham. The only other article in the current number contains an account of what is styled "the Erie Railroad Row." This article, to the lovers of sensational reading, is, alone, worth the whole year's subscription. The revelations respecting the deplorable condition of the New York elective judiciary, are marvellous beyond conception. — *The American Law Review* continues to be conducted with marked ability, and should find many readers in Canada.

RECENT ENGLISH DECISIONS.

Account.—Plaintiff agreed to act as defendant's manager, receiving 7½ per cent. per annum of the profits of the business, to be made up to £500 in any year in which the said share of profits should be less than that sum. The works were valued at the same time. Six years later the defendant sold them at a gain of £47,916. In taking the account, under the above agreement, *held*, that the defendant was not entitled to charge interest on his capital, nor interest on old debts, nor the £500 guaranteed to the plaintiff in the profit and loss account; that he might charge him the depreciation, from the waste of machinery and running out of his lease, calculated on the valuation of the works; that the plaintiff could not charge 7½ per cent. on the gain at which the works were sold, as profits of that year.—*Rishton* v. *Grissell*, Law Rep. 5 Eq. 326.

Assault.—The prisoner assaulted a constable in the execution of his duty. The constable went for aid, and after an hour returned with three others, but found the prisoner had locked himself up in his house. Fifteen minutes later the constables forced the door, entered, and arrested the prisoner, who wounded one of them in resisting the arrest. *Held*, that the arrest was illegal.—*Regina* v. *Marsden*, Law Rep. 1 C. C. 131.

Banker.—Appellants, bankers, had policies on the life of one deceased as security for money due from him to them. To obtain payment of these, they received the probate of his will from his widow and executrix, promising to make over the balance to her. Said probate showed remainders to children after the widow's life estate. The latter drew a check for said balance, payable to a firm composed of herself and her husband's former partner, which banked with appellants, and the amount was placed to the credit of the firm accordingly. In a suit by the children, *held*, by the House of Lords, reversing the decree of the Lord Chancellor of Ireland, that the bankers were not liable to replace said balance. To justify a banker in refusing to pay a cheque

drawn by a customer as executor, there must be a breach of trust intended by the latter, and the banker must be privy to that intent. Proof that any personal benefit to the bankers themselves is designed or stipulated for, is the strongest evidence of such privity.—*Gray* v. *Johnston*, Law Rep. 3 H. L. 1.

Canada, Law of.— A *défense d'aliéner pure et simple*, viz., a provision against alienation for twenty years from death of testator, in the interest of no one but the devisee, is void by the old French law in force in Lower Canada, founded on the Roman law, and by the general principles of jurisprudence.—*Renaud* v. *Tourangeau*, Law Rep. 2 P. C. 4.

Conflict of Laws.—1. After an English marriage between two English persons, obtained by the fraud of the husband and never consummated, the husband committed adultery. Some years later he went to Scotland, to found a jurisdiction against himself, for which he was to receive a sum; to be forfeited, however, in case he gave any information which should be prejudicial to a divorce. After a residence of forty days, a divorce *a vinculo* was obtained against him, and a marriage was thereupon duly celebrated between the wife and an Englishman who was thenceforth domiciled in Scotland. After the death of all the above parties, *held*, that the children of the last marriage were not "lawfully begotten," so as to take English property under an English will.—*Shaw* v. *Gould*, Law Rep. 3 H. L. 55.

2. B. had left Jamaica, his domicile of birth, for good, and gone to Scotland, where afterwards he acquired a domicile; but it being *held*, that, at the time in question, his mind was not made up to stay there permanently, it was further *held*, that the personal *status* of the domicile of birth remained until a new domicile was acquired.—*Bell* v. *Kennedy*, Law Rep. 1 H. L. Sc. 307.

Custody of Children.—The Court gave the custody of two infant children—the one being three or four years, the other eighteen months old—to the mother, pending a suit for dissolution of marriage by the father, on the ground that her health was suffering from being deprived of their society, and that they were living with a stranger, not the father.—*Barnes* v. *Barnes & Beaumont*, Law Rep. 1 P. & D. 463.

Damages.—The defendant contracted in writing to sell to the plaintiff 500 tons of iron, to be delivered by the 25th of July. Owing to an accident in his furnaces, in that month, the defendant delivered none of the iron by the 25th; but proposed that plaintiff should take iron of a different quality, at the same time denying his liability, on the ground of the accident. This proposal was declined, after consideration. Dec. 29, the brokers who had acted for both parties, and were still acting for the plaintiff, wrote that the parties who had contracts for the iron were pressing them, and threatened to purchase against the defendant; adding, "when our Mr. T. waited upon you, he was informed that it might take three months to put the furnaces into repair, and we informed all our friends to this effect, who have waited considerably over that time. When do you think we may promise deliveries?" The defendant answered, not denying these statements, and only stating that he could not say what would be done with the furnaces. The plaintiff bought in the market, in February, and the price of the iron having risen, sought to recover from the defendant the difference between the contract price and the market price in February. The jury returned a verdict for that amount. *Held*, that there was evidence from which the jury might infer that the plaintiff's delay was at the defendant's request; that as the evidence went to show, not a new contract, but simply a forbearance by the plaintiff, at the request of the defendant, the Statute of Frauds did not apply; and that the verdict ought to stand. (Exch. Ch.)—*Ogle* v. *Earl Vane*, Law Rep. 3 Q. B. 272.

False Imprisonment. — Defendant, upon whose premises a felony had been committed, acting on information given him by his own coachman, the most material part of

which was derived from R., a neighbor's coachman, gave the plaintiff into custody on the charge, without making any personal inquiry of R. The plaintiff was living openly in the neighborhood, and it was not suggested that he was likely to run away. In an action of false imprisonment, the judge instructed the jury that, under the circumstances, there was no probable cause; and the verdict being for the plaintiff, the Court of Exchequer Chamber refused to disturb it.—*Perryman* v. *Lister*, (Exch. Ch.), Law Rep. 3 Ex. 197.

Illegitimate Children.—A testator, who had none but illegitimate children, left his property in trust, to divide the residue into four parts, and to hold one share each, on certain trusts, for each of his four children; and if the trusts should fail as to the share of either child, then the same was to be held for such persons as would be the next of kin of said child at his decease, under the Statute of Distributions. There were further trusts as to moneys to which a child should become entitled, "by virtue of the provisions hereinbefore contained, as next of kin of the others, or other, of them."—The trusts failed as to one child. *Held*, that there was an intestacy as to that share. The words "next of kin," could not be read as designating the surviving illegitimate children of the testator.—*In re Standley's Estate*, Law Rep. 5 Eq. 303.

Insurance.—A ship, then at Calcutta, was insured for three months from and after thirty days after her arrival there, and valued at £8,000. At the time the policy was made, but unknown to the parties, the ship had been injured in a storm, so that the expense of the repairs would have exceeded its value when repaired. During the continuance of the risk, the ship was totally lost. *Held*, that the policy attached, notwithstanding the previous injury to the ship, and that, there being no fraud, the valuation of the ship in the policy was conclusive between the parties. —*Barker* v. *Janson*, Law Rep. 3 C. P. 303.

Judge.—Plea to a declaration for slander, that the defendant was a county court judge, and the words complained of were spoken by him in his capacity as such judge, while sitting in his court, and trying a cause in which the present plaintiff was defendant. Replication, that the said words were spoken falsely and maliciously, and without any reasonable, probable, or justifiable cause, and without any foundation whatever, and not *bona fide* in the discharge of the defendant's duty as judge, and were wholly irrelevant in reference to the matter before him. *Held*, that the action could not be maintained.—*Scott* v. *Stansfield*, Law Rep. 3 Ex. 220.

Larceny.—1. The prisoner, having paid a florin to the prosecutrix for purchases, asked her afterwards to give him a shilling for change which he put upon the counter. She put a shilling down, when the prisoner said to her, "You may as well give me the two-shilling piece, and take it all." She then put down the florin and the prisoner took it up. She took up her shilling, and the change for it put down by the prisoner, and was putting them into the drawer, when she saw she had but one shilling of the prisoner's money. But as she was about to speak, the prisoner's confederate drew her attention, and both left the shop. *Held*, that the prisoner was guilty of larceny.—*Regina* v. *McKale*, Law Rep. 1 C. C. 125.

2. The prisoner found a sovereign on a highway; believing it to have been accidentally lost, and with a knowledge that he was doing wrong, he at once determined to keep it, notwithstanding the owner should afterwards become known to him, but not expecting that the owner would. *Held*, on the authority of *Reg.* v. *Thurborn*, (1 Den. C. C. 387; 18 L. J. M. C. 140), that the prisoner was not guilty of larceny.—*Regina* v. *Glyde*, Law Rep. 1 C. C. 139.

Limitations, Statute of.—1. Trustees, under an Act of Parliament, made a road fifty years before this suit, separated from a field by a hedge, a bank, and a ditch three feet wide, adjoining the field. This ditch became filled up, and was never re-opened; but a ditch a foot wide had been made since by the tenant of the field, and it had also become obliterated. The hedge had always been included in the lease of the field, and

the tenants had always trimmed the same at their own expense, and testified that they had "held and used" the land within the same for more than twenty years, (though apparently only by allowing their cattle to drink out of the ditch when open, and to graze over its site when filled up), without the interference of the trustees. *Held*, there was no such adverse user as to give the owners of the land a title to the site of the ditch by the Statute of Limitations.—*Searby* v. *Tottenham Railway Co.*, Law Rep. 5. Eq. 409.

2. The analogy of the Statute of Limitations cannot be set up by an executor, in answer to a claim founded on breach of trust by his testator.—*Brittlebank* v. *Goodwin*, Law Rep. 5 Eq. 545.

3. A cheque is not an advance until it has been paid, and the Statute of Limitations only runs from that time.—*Garden* v. *Bruce*, Law Rep. 3 C. P. 300.

Master and Servant.—1. It is no answer to a suit against directors of a company, for infringement of a patent, that the acts were done by workmen employed by defendants, but contrary to their orders; the infringement having taken place in defendants' works, and in the course of the proper duties of the workmen.—*Betts* v. *De Vitre*, Law Rep. 3 Ch. 429, 441.

2. W., the defendants' servant, was killed in consequence of the negligent construction of a platform by N., also in their employ. N.'s fitness for his place was not denied. The jury were instructed, that, if the platform was completed before W. was engaged, and if the defendants had delegated to N. their whole power and duty, without control on their part, W. and N. were not fellow-workmen, and the defendants would not be discharged on that ground. *Held*, erroneous. N.'s duty was a continuing one. A master is not made liable to a servant for an injury caused by the negligence of a fellow-servant, by the simple fact that the latter is of a higher grade, as a superintendent.—*Wilson* v. *Merry*, Law Rep. 1 H. L. Sc. 326.

Negligence.—1. The defendants provided gangways from the shore to ships lying in their dock, the gangways being made of materials belonging to the defendants, and managed by their servants. The plaintiff went on board a ship, in said dock, on business, at the invitation of one of the ship's officers; and, while he was there, defendants' servants moved the gangway, and negligently left it insecure, so that it gave way, and the plaintiff was injured on his return, without negligence on his part. *Held*, (by *Bovill*, C. J., and *Byles*, J.; Keating, J., *dubitante*), that there was a duty on the defendants toward the plaintiff not to let the gangway be insecure without warning him, and that he could recover damages for his injuries.—*Smith* v. *London & Saint Katharine Dock Co.*, Law Rep. 3 C. P. 326.

2. The plaintiff, while travelling by the defendants' railway, was injured by the fall of an iron girder, which workmen, not under the defendants' control, were employed in placing across the walls of the railway. It was proved that the work was very dangerous; that the defendants knew the danger; that it was usual, when such work was going on, for the company to place a man to signal to the workmen the approach of a train; and that this precaution was not adopted.—*Held*, sufficient evidence to warrant a jury in finding that the defendants were guilty of negligence and liable, even though the workmen were so also.—*Daniel* v. *Metropolitan Railway Co.*, Law Rep. 3 C. P. 216.

Nullity of Marriage.—In a suit by a wife for nullity, on the ground of the husband's impotence, the only evidence of the same was that of the petitioner, which was contradicted by the respondent. The medical witnesses testified that she might have had regular intercourse with her husband consistently with the appearances, and there were circumstances discrediting the wife's testimony. A decree was refused.—*U.* v. *J.*, Law Rep. 1 P. & D. 460.

Obscene Publication.—A pamphlet entitled "The Confessional Unmasked," besides innocent casuistical discussions, contained obscene extracts from Catholic writers, with condemnatory notes. It was published and sold at cost solely for controversial purposes.

It was ordered to be destroyed under St. 20 & 21 Vict. c. 83, § 1. (Mellor, J., *dubitante*). It being found to be obscene, as a fact, within that statute, the intention to break the law must be inferred, and was not justified by an ulterior good object.—*Regina* v. *Hicklin*, Law Rep. 3 Q. B. 360.

Partnership.—The plaintiff and defendant entered into partnership as solicitors, for a term of seven years, the plaintiff paying a premium of £800. The defendant, before entering into the partnership, knew that the plaintiff was inexperienced and incompetent in his profession, and gave that as a reason for the amount of the premium asked. After two years the defendant wrote to the plaintiff, accusing him of negligence, and saying that the partnership must be dissolved, and that he had instructed counsel to file a bill for that purpose. Plaintiff, thereupon, filed a bill for a dissolution, and for a return of a part of the premium proportionate to the unexpired portion of the term. *Held*, (reversing the decision of Stuart, V. C.,) that the plaintiff could recover.—*Atwood* v. *Maude*, Law Rep. 3 Ch. 369.

Patent.—1. The specification of a patent may describe the process so insufficiently as to be bad, and yet disclose enough to show that what is claimed by a subsequent patent is not new. It is like a publication in a book, and it is not necessary that it should have been acted on, but only that it should be capable of being acted on, which which may be tested by experiments, using any new facilities prior to the second patent. But it must furnish the knowledge necessary to carry it into practice with reasonable certainty, in order to invalidate the second patent. The public use of an invention means a use and invention *in* public, not *by* the public.--*Betts* v. *Neilson*, Law Rep. 3 Ch. 429.

2. The plaintiff being possessed of a patent, granted the defendants the exclusive license to work it in a certain district, by an indenture in which the latter covenanted to pay certain royalties, and to give every information, the better to enable the plaintiff to support the letters-patent, and the plaintiff covenanted for quiet enjoyment of the patent by the defendants; and that, in case any persons should work the patented processes, the plaintiff would, at his own costs, commence and carry on all such actions, &c., as should be necessary to put a stop to such working of said processes; and that in case the plaintiff should fail or neglect so to do; the defendants should not be liable "thenceforth" to pay the said royalties, "*after the time of such person commencing to work the said processes*," until the plaintiff had by law, or otherwise, put a stop to such working. But the defendants were to keep an account of all royalties, that they might be paid to the plaintiff, on the enforcement of the patent right against the person infringing the same. *Held*, that the payment of royalties was not to be suspended, under the above condition, until the plaintiff had notice of an infringement, and until he had been allowed a reasonable time to institute proceedings to restrain the same.—*Henderson* v. *Mostyn Copper Co.*, Law Rep. 3 C. P. 202.

Railway.—1. A train of the defendants, while stationary on their railway, was run into by, and by the fault of, another train. Several companies had running powers over that part of the defendants' line, and no evidence was given whether the moving train belonged to or was under the control of the defendants. *Held*, that *prima facie* defendants were liable.—*Ayles* v. *South Eastern Railway Co.* Law Rep. 3 Ex. 146.

2. A railway carriage, on which the plaintiffs (husband and wife) were passengers to R., on reaching R. overshot the platform on account of the length of the train. The passengers were not warned to keep their seats, nor was any offer made to back the train to the platform, nor was it so backed. After several persons had got out of the carriage the husband did so, and the wife then took his hands and jumped from the step, and in so doing strained her knee. There was no request made to the Company's servants to back the train, or any communication with them. It was daylight. *Held* (*per* Martin, Bramwell, and Pigott, BB.; Kelly, C.B., *dissentiente*), that there was no evidence for the jury of negligence in the defendants.—*Siner* v. *Great Western Railway Co.*, Law Rep. 3 Ex. 150.

3. The plaintiff, on getting into a railway carriage, having a parcel in his right hand, placed his left hand on the back of the open door to aid him in mounting the step. It was after dark, and he could see no handle, if there was one. The guard, without warning, slammed the door, throwing the plaintiff forward, and crushing his hand between the door and door-post. *Held*, (by Byles and Keating, JJ.; Montague Smith, J., *dissentiente*,) that the jury were justified in finding that the guard was negligent, and that the plaintiff was not, and that the injury was not too remote to be recovered for.—*Fordham* v. *Brighton Railway Co.*, Law Rep. 3 C. P. 368.

4. But when the plaintiff had entered the carriage, and a porter gave warning, and then shut the door, in the ordinary course of his duty, the other facts being as above, *Held*, that the plaintiff could not recover.—*Richardson* v. *Metropolitan Railway Co.* Ibid. 374, in notes.

Slander.— Slander: "You have heard what has caused the fall" (*i. e.*, in certain shares); "I mean, the rumor about the South Eastern Chairman having failed:" meaning thereby that the plaintiff had become insolvent. Plea, that defendant meant, and was understood to mean, that there was a rumor to the above effect, and not that the plaintiff had become insolvent, as in the inuendo alleged, and that it was true that there was such a rumor. *Held*, that the plea was bad. The existence of the rumor did not justify its repetition, the latter not being shown to be privileged, and the truth of the rumor not being pleaded.—*Watkin* v. *Hall*, Law Rep. 3 Q. B. 396.

Stoppage in Transitu.–Goods were shipped by A. in Calcutta to B. in England. B. pledged the bill of lading to C., and afterwards became bankrupt. On the arrival of the ship in which the goods were, C. obtained from the ship's brokers, on payment of the freight, an overside order for the delivery of the goods. This order was presented to the officer of the ship, who promised C. should have the goods as soon as they could be got at. Before the ship broke bulk, A. forbade the delivery of the goods. *Held*, that A. had not lost his right of stoppage *in transitu*. The goods were not brought into the possession, actual or constructive, of B. by the promise to C. After satisfying C., A. had a right to the surplus proceeds, as against the assignees in bankruptcy of B.—*Coventry* v. *Gladstone*, Law Rep. 6 Eq. 44.

Undue Influence.—Persuasion is not unlawful; but pressure, of whatever character, if so exerted as to overpower the volition, without convincing the judgment, of a testator, will constitute undue influence, though no force is either used or threatened.—*Hall* v. *Hall*, Law Rep. 1 P. & D. 481.

RECENT AMERICAN DECISIONS.

Assumpsit.—In *assumpsit* by the owners of a vessel against the master for earnings, a release by one of the plaintiffs is a bar to the action; and evidence of collusion between the parties to the same is inadmissible to change its effect.—*Hall* v. *Gray*, 54 Me. 230.

Bills and Notes.—An instrument promising to pay "five hundred" to A. or order, but having "$500" on its face, *held*, a promissory note.—*Corgan* v. *Frew*, 39 Ill. 31.

Broker.—1. The plaintiff employed the defendant, a broker, to carry stock for him; and, the former having failed to make good a margin on demand, the latter sold the stock within two hours. This was in May. In September, the plaintiff demanded an account of the sales, and received and drew a cheque for the balance due him. This suit was not begun till December. *Held*, that, even if time enough had not been allowed the plaintiff before selling, the sale had been ratified by him.—*Hanks* v. *Drake*, 44 Barb. 186.

2. Such a contract is rather a conditional sale than a pledge; and on the failure of the principal to make the margin good on demand, the broker may sell without giving him notice of the time or place of the sale.—*Markham* v. *Jaudon*, 49 Barb. 462.

Carrier.—1. A., the day after delivering

hay to a railroad company for transportation, requested them not to forward it until he had seen the party to whom he had sold it. The hay had been put on platform cars, where it was left, and the next day it was burnt by sparks from an engine. *Held*, that, by the request of A. the liability of the bailees, as carriers, ceased; and they were only liable for negligence as warehousemen.—*St. Louis, A. & T. H. R. R. Co.* v. *Montgomery*, 39 Ill. 335.

2. Checks for luggage worth $456.35 were delivered to a carrier, and a receipt taken, on which was printed, "Liability limited to $100, except by special agreement, to be noted on this card." There was no proof of assent to these terms, except the taking of the receipt. The luggage was lost by the carrier's negligence. *Held*, that the carrier was liable for its whole value. It did not appear the contract was assented to; and, if it was, it did not limit his liability for negligence, but only as an *insurer*. —*Prentice* v. *Decker*, 49 Barb. 21.

Criminal Law.—It is error in a judge to give any charge to the jury in the absence of the prisoner.—*State* v. *Blackwelder*, 1 Phillips, N. C. 38.

Damages.—In an action against a common carrier for damages caused by unjustifiable delay in transporting flour, the decline in its market value between the time when it actually arrived at the place of destination, and when it would have arrived but for the delay, may be considered by the jury in ascertaining the actual damages of the plaintiff.—*Weston* v. *Grand Trunk R. Co.*, 54 Me. 376.

Divorce.—Complainant having a domicile elsewhere, brought her trunk into a State, and immediately began a suit for divorce for her husband's adultery. *Held*, that she was not an inhabitant or resident of the State, within the Statute giving the Court jurisdiction.—*Winship* v. *Winship*, 1 C. E. Green, 107.

Evidence.—Statute of Limitations pleaded, and presiding judge could not determine whether the date of the note declared on was January or June. *Held*, that extrinsic evidence was admissible to show the true date, and that the question was properly left to the jury.—*Fenderson* v. *Owen*, 54 Me. 372.

Factor.—A factor who makes advances on account of goods consigned to him, has a right to sell enough of the same, according to the usual course of his duty, to reimburse such advances, notwithstanding orders to the contrary from the consignor.—*Whitney* v. *Wyman*, 24 Md. 131.

Fixtures.—1. Fruit trees and ornamental shrubbery in a nursery pass with the land as between vendor and vendee; and evidence of a verbal agreement for their reservation, contemporaneous with, but not contained in, the written contract is not admissible.—*Smith* v. *Price*, 39 Ill. 28.

2. Timber trees cut down and lying on the land where they fell, with tops and branches still on, pass by a warranty deed of the land. Otherwise, it seems, if cut into logs or hewed into timber.—*Blackett* v. *Goddard*, 54 Me. 309.

3. A marine railway, consisting of iron and wooden rails and sleepers, endless chain, gear, wheels and ship cradle, the sleepers being laid on the ground in the usual way, with a road bed of earth, so far as one is required, is a fixture, and passes by a levy upon the realty.—*Strickland* v. *Parker*, 54 Me. 263.

Fraud.—The defendant, a creditor to a large amount, being inquired of as to the solvency of his debtor, wrote a letter speaking well of it, and not mentioning the debt due to himself. Credit was given thereupon which would have been refused had said debt been known of. Defendant having exhausted the debtor's goods in paying his own debt, *held*, that he was liable to the extent of the above credit.—*Viele* v. *Goss*, 49 Barb. 96.

Statute of Frauds.—1. Defendants' wood agent agreed verbally to take all the wood the plaintiff would put on the line of their road; and the plaintiff spoke of cutting and hauling the wood from his own land, naming a particular place. He cut wood accordingly, landed it within the limits of the road, and called on the wood agent to measure it. The latter said he would, but did

not; and, after two or three years, the wood was burned by fire from defendants' engines. *Held*, that the contract was for a sale, and within the Statute of Frauds, and not for the manufacture of particular wood into cordwood. Also, that there was no evidence that the defendants accepted the wood.—*Edwards* v. *Grand Trunk Railway*, 54 Me. 105.

2. The plaintiff, being indebted to one of the defendants in a sum equal to or exceeding a debt from the defendants to him, it was agreed by parol that the amount due him should be applied upon his indebtedness, and the latter cancelled. The plaintiff was to give a receipt, which was never done. *Held*, that his claim was not extinguished. This was a sale of a chose in action by the plaintiff, and void by the Statute of Frauds, while resting merely in parol.—*Brand* v. *Brand*, 49 Barb. 346.

Husband and Wife.—The courts of North Carolina will not interfere to punish a husband for the moderate correction of his wife, although unprovoked.—*State* v. *Rhodes*, 1 Phillips, N. C. 453.

Illegal Contract.—A clause in a policy of insurance, stipulating that in case any dispute shall arise in relation to any alleged loss, no policy holder shall maintain any action thereon until he shall have offered to submit his claim to referees to be mutually chosen by the parties, and that, in case of any suit being commenced without such offer of reference, the company shall be exempted from all liability to the plaintiff's claim: *held*, void.—*Stephenson* v. *Piscataqua* F. & M. Ins. Co., 54 Me. 55.

Indictment.—An indictment alleging that the accused "feloniously, wilfully, and of his malice aforethought, did kill and murder," will sustain a verdict of guilty of murder in the first degree, although that is defined by Statute as murder "with malice *express* aforethought."—*State* v. *Verrill*, 54 Me. 408.

Insurance.—Temporary repairs were made upon a vessel in a foreign port by the insured, by the written authority of the insurers, in a case where they might have abandoned for a total loss, in order that the vessel might be brought to the port of destination, and there permanently repaired at less cost. *Held*, that the liability of the insurers was not limited by the sum insured, but that they were liable for the whole expense of the temporary as well as the permanent repairs.—*Alexander* v. *Sun Mutual Ins. Co.*, 49 Barb. 475.

Master and Servant.—A railroad bridge, which was properly built in all respects, fell in consequence of dry rot, and killed a servant of the company. The day before, it had been inspected by the repairer of bridges and division superintendent, and watched under the weight of a freight train, and was thought sound. *Held*, that the company were not liable, either for negligence as to their bridge or for the employment of incompetent persons to examine the bridge.—*Faulkner* v. *Erie R. Co.*, 49 Barb. 324.

Nuisance.—1. A tomb on defendant's land, within forty-four feet of plaintiff's windows, formerly contained bodies, which were removed because their effluvia rendered the plaintiff's house unwholesome. Afterwards, another body was put therein, and the plaintiff's life was made uncomfortable by apprehension of danger from that cause; and the value of his house was lessened by $1000 or $1500, although no bad smell had been perceived at the date of the writ. *Held*, that on these facts a nonsuit was improperly ordered.—*Barnes* v. *Hathorn*, 54 Me. 124.

2. The common law allows the owner of the soil over which a floatable but innavigable stream flows, to build a dam across it and erect a mill thereon, provided he makes a convenient and suitable passage way for the public by or through the dam.—*Lancey* v. *Clifford*, 54 Me. 487.

Principal and Agent.—A cashier received at his bank a sum of money from the plaintiff, with orders to apply it to a note of the latter, then not due. He did apply it to another note signed by the plaintiff as surety, which was overdue, both of said notes being payable to said bank. The plaintiff never acquiesced in said application. *Held*, that the cashier was personally liable for said money with interest from the time when received, whether he applied it to his

own use or that of the bank.—*Norton* v. *Kidder*, 54 Me. 189.

Proximate Cause.—Defendant kindled a fire upon his land for purposes of husbandry. Two days later, a violent wind arose, and carried some of the fire sixteen rods to the plaintiff's woodland, where it became unmanageable. *Held*, that defendant was liable for the damage, if it was owing to a want of ordinary care on his part, either in the time or manner of kindling, or in the means used to prevent the spreading of the fire.—*Hewey* v. *Nourse*, 54 Me. 256.

Robbery.—The robbery of one walking on a railroad is not robbery in a highway, within the meaning of a penal statute copied from 23 H. VIII. c. 1, §3, and 1 Ed. VI. c. 12, §10.—*State* v. *Johnson*, 1 Phillips, N. C. 140.

Sale.—1. Defendant, being then in good standing, gave a verbal order for spirits, which were forwarded by rail and stored. He was in fact insolvent at the time of the order, and knew this before paying the freight and taking the goods into his custody. The jury were instructed that, if he received the goods with intent not to pay for them, the sale was void, although he had no such design when be ordered the same. *Held*, correct.—*Pike* v. *Wieting*, 49 Barb. 314.

2. A vendor, after the refusal of the purchaser to perform his part of the bargain, may sell the goods without notice of the time or place of sale to said purchaser, and wherever he can get the best price and readiest sale within the usual course of trade, he not being restricted to the place of delivery.—*Lewis* v. *Greider*, 49 Barb. 606.

Slave.—A homicide was committed by the prisoner when a slave, and he had since become free. *Held*, that this did not operate a pardon.—*State* v. *Brodnax*, 1 Phillips, N.C. 41.

Surety.—A surety requested the creditor "to wait on" the principal "as long as he could;" and the creditor afterwards gave the latter a written extension for a year. *Held*, that the question, whether the above words authorized a legal contract for delay, so as to prevent the discharge of the surety, was a question for the jury.—*Treat* v. *Smith*, 54 Me. 112.

Trade Mark. — Plaintiffs made cement from lime beds near Akron, Erie County, known and sold as "Akron Cement," and "Akron Water Lime;" the packages being marked "Newman's Akron Cement Co., manufactured at Akron, N. Y. The Hydraulic Cement, known as the Akron Water Lime." Defendants not being inhabitants of Akron, but owning lime beds near Syracuse, in Onondaga County, and knowing that plaintiffs' cement was sold by above names, named their beds "Onondaga Akron Cement and Water Lime," and afterwards sold their cement in the places where the plaintiffs' was sold, in packages marked "Alvord's Onondaga Akron Cement, or Water Lime, manufactured at Syracuse, New York." *Held*, that the word "Akron" was a trade mark, and the use of it was enjoined.—*Newman* v. *Alvord*, 149 Barb. 588.

Will.—Testator asked a witness to read a paper, which he did, silently. The testator then asked him to witness his signature, and said, in answer to questions, that he had heard the paper read, and thought it was all right. Another person was then called into the room, and asked by the testator to witness his signature. Both witnesses then signed. Nothing was said as to what the paper was. *Held*, that this was not a sufficient publication.—*Abbey* v. *Christy*, 49 Barb. 276.

CIRCUIT COURT, QUEBEC.

SEPTEMBER TERM, 1868.

Coram MEREDITH, C. J.

SIMARD *v.* ROY.

Held, that when the writ of summons contains a conclusion for the costs of suit, it is not necessary that there should also be one in the declaration annexed.

DAWSON *v.* BREWIS.

Held, that an exception to the form upon the ground of the falsity of the affidavit of the plaintiff, is a good plea to a seizure be-

fore judgment, grounded on an affidavit that the defendant was secreting his effects.

By the Court.—I hold that the form of pleading adopted by the defendant in this case is a correct one, and have therefore proceeded to examine the case upon its merits. I have come to the conclusion that the plaintiff had good cause to make the affidavit which he made in the case.—(I. T. W.)

LORD CRANWORTH.

Robert Monsey Rolfe was born at Cranworth, in the county of Norfolk, England, December 18th, 1790. He was the eldest son of the clergyman of that Parish, the Rev. Edmund Rolfe, who was first cousin of the renowned Admiral Lord Nelson. He attended the grammar school of Bury St. Edmunds; going from there to Winchester College, and finishing his collegiate education at Trinity College, Cambridge. He came out as Master of Arts in 1812, with the moderate rank of 17th wrangler, and was in the same year elected to a fellowship at Downing College. Having been a law student at Lincoln's Inn, he was called to the bar there in 1816. He began as an Equity barrister, and for many years worked hard at Lincoln's Inn, on a small and slowly increasing Chancery practice. He became Recorder of Bury St. Edmunds, and in 1832 was made a king's counsel by Lord Brougham. He was returned to the Reformed Parliament in the Liberal interest, in December, 1832, as member for the Cornish borough of Penryn, and continued to represent it until 1839. On the 6th of November, 1834, during Lord Melbourne's first administration, he was made Solicitor General; but, retiring with the Whig Ministry the very next month, he remained out of office during the brief rule of Sir Robert Peel. He resumed it again in the spring of 1835, under Lord Melbourne, and held it until his appointment as a puisne Baron of the Court of Exchequer in 1839. When Lord Cottenham left the woolsack in 1850, Baron Rolfe was appointed one of the three Commissioners of the Great Seal, and held the office for a brief period. After the death of Sir Lancelot Shadwell, he was, November 2nd, 1850, made one of the Vice-Chancellors, and a month later was raised to the peerage with the title of Baron Cranworth. This creation was the first and only instance of a Vice-Chancellor receiving a peerage. In less than a year after, he became one of the two Lords Justices of the Court of Appeal in Chancery, and in December, 1852, he was appointed Lord Chancellor of Great Britain; continuing in office during Lord Aberdeen's ministry and during that of Lord Palmerston, which followed it. The Tories came into power again with the Earl of Derby's second administration, February 21st, 1858, and Lord Cranworth had then to yield to an eloquent barrister, Sir Frederick Thesiger, who took his seat on the woolsack with the title of Lord Chelmsford. Lord Cranworth was passed over for Lord Campbell, when Lord Palmerston's second administion began in June, 1859. Lord Westbury succeeded Lord Campbell, who died in office in June, 1861. The unhappy complications in which Lord Westbury became involved by the disgraceful proceedings of his eldest son led to his abandoning the Chancellorship, and Lord Cranworth was again elevated to the woolsack. This unexpected appointment was attributed by some to a desire on the part of the government to save one ex-chancellor's pension, as there were at that time four "Dowager Chancellors" (Lords Brougham, St. Leonards, Cranworth, and Chelmsford) drawing a pension of £5,000 a year each. Lord Cranworth did not long retain the office, for the Earl of Derby came into power a third time, June 27th, 1836, and Lord Chelmsford resumed the woolsack. Since his retirement, Lord Cranworth performed his share of the duties of the House of Lords, but had of late become quite infirm, so that his death, which occurred on July 26th, 1868, created no surprise. Lord Cranworth was not distinguished by any great talents, and was in no sense a marked man. Lord Romilly said

of him in the House of Lords, the day after his death:—"He was pre-eminently distinguished for three qualities, his candor and fairness, his common sense, and his gentlemanly feeling and bearing towards all with whom he was brought into contact." Lord Cairns used on the same occasion rather warmer language, not attributing to Lord Cranworth, however, the possession of any brilliant or uncommon qualities. He said: "My Lords, of the loss of Lord Cranworth to those who have had the privilege of enjoying his friendship, I feel it impossible for me to speak. But, my Lords, this I may say, that your Lordships and the public have in him lost one who has passed through a long career of high judicial office without a tarnish on his name; one who, I venture to say, in the discharge of his great duties, for courtesy, for candor, for careful and conscientious efficiency, and above all, for sound and explicit common sense, has never been surpassed by any persons who ever before filled the same offices." Possessed of much natural capacity, by constant study and assiduous devotion to his profession, with tact, good temper, and genial manners, he rose slowly and gradually to the Lord Chancellorship, filling that as well as the antecedent positions honorably to himself and satisfactorily to the public. Although a Liberal from the first, he was nothing of a Reformer. Although a politician, he was not a statesman. He made no pretensions to being an orator. What he accomplished in life,—and he accomplished much,—what fame he gained,—and he has left a most honorable record,—was due to the exercise of those rare qualities which we have referred to.

The *London Times*, from which we copied (2 L. C. L. J. 124) an article on the retirement of Lord Cranworth from office, thus portrays him after his death. "Although Lord Cranworth lived in agitated times, he never made a personal enemy; and, although during the years in which he held the great seal he presided over debates of the keenest interest, the demeanor of the House of Lords was under him maintained unruffled. His career was of a kind of which Englishmen are not unnaturally proud. He was the son of a country parson, and he made his way in the world by his own good abilities and sterling character. A sedulous schoolboy, a successful, if not a distinguished student at the University, an advocate of trusted reputation, a judge of the first rank, both on the common law and equity sides of Westminster Hall, distinguished as a lawyer by his freedom from the prejudices of his profession, and as a politician by his perfect temper and consistency, Lord Cranworth earned the position he held with the approval of all men. It was as impossible for him to sympathize with the stormy violence of Brougham as with the dogged resistance Eldon offered to change. His life had been too easy to allow him to be revolutionary,—and, owing nothing himself to privilege, he was never tempted to engage in a vain battle in defence of privileges. He had worked hard for many years, but his labor had been well rewarded; and as he kept his mind open to fresh impressions to the last, he never sank into the optimism of those who think the world must be perfectly well ordered because they are themselves tolerably comfortable in it. Few men enjoyed greater personal popularity. He was a thorough Whig, but he never allowed the keenness of his partisanship to cloud his judgment or to warp his actions."

Another critic says:—"Sir Robert Monsey Rolfe, as Solicitor General, and as a judge, it was often said, had a kind heart and an ever smiling face. His looks did not belie the real nature of the man within. As an advocate in the courts, indeed, and as a member of the House, he showed no symptoms of fancy, or even of liveliness; and he seemed as if he could not for the life of him imagine what anything light or playful could have to do with either side of Westminster Hall. His speeches were even dull and somnolent; and often must both the judge and the audience have desiderated a little bit of vivacity or wit. But it never came. There was nothing but an even flow of dull and dry but correct legal matter, unrelieved by the shadow of a joke or jest, even when the subject invited it; and yet

his ever pleasing countenance was radiant with smiles. When, therefore, he sat upon the bench as a judge and became Lord Cranworth, he had no jocose habits to unlearn, no impaired dignity to regret. Somewhat under the average height, rather feebly made, and with a pale complexion, slightly angular and prominent nose, his light gray amiable eyes made his personal appearance prepossessing, and their owner a favorite with all who were brought into contact with him."

GOVERNOR EYRE'S CASE.

The case of the *Queen* v. *Eyre*, in the Queen's Bench, has given rise to an extraordinary scene, which, in the language of the London *Times*, caused greater excitement in Westminster Hall, than anything that has occurred there during living memory. On the 2nd of June last, Mr. Justice Blackburn, the senior puisne Judge of the Queen's Bench, delivered a charge to the Grand Jury of Middlesex on the indictment presented against Mr. Eyre for high crimes and misdemeanors in acts of alleged abuse and oppression in the execution of his office as Governor of Jamaica.

Among other propositions, the learned Judge laid down the following, viz., That martial law anciently existed in England, in practice at least, although not sanctioned in courts of law; that after the Petition of Right, in the time of Charles I., it was abandoned in time of peace, but not expressly abandoned in time of war; that under the colonial Statutes of Jamaica, the Governor had authority to proclaim martial law for a limited period; and that the transportation of Gordon from a peaceful part of the island to a district where martial law existed, was not criminal if Mr. Eyre honestly thought that Gordon was guilty, and that there was such a danger from an organized conspiracy that it was necessary that he should be punished promptly in order to suppress the insurrection, and that a reasonable man in Governor Eyre's position would have thought as he did; and he further stated that the points of law in his charge had the sanction of the Lord Chief Justice and his brethren of the Queen's Bench. The Grand Jury, after deliberating four hours, came into court, and informed the Judge that they returned "no true bill." At the next session of the court *in banco*, the Lord Chief Justice, Sir Alex. Cockburn, took occasion to contradict some of the statements of Mr. Justice Blackburn. In reference to the assertion that the law laid down in the charge had the assent of other members of the court, he read from a written paper as follows:—

"There was, undoubtedly, a proposition of law, which seemed to us sufficient for the guidance of the jury, and which we understood was to form, if I may so express myself, the basis of the charge, on which proposition we were all agreed; namely, that, assuming that the governor of a colony had, by virtue of authority delegated to him by the Crown, or conferred on him by local legislation, the power to put martial law in force, all that could be required of him, so far as affects his responsibility in a court of criminal law, was, that in judging of the necessity, which it is admitted on all hands, affords the sole justification for resorting to martial law,—either for putting this exceptional law in force, or prolonging its duration, he should not only act with an honest intention to discharge a public duty, but should bring to the consideration of the course to be pursued, the careful, conscientious and considerate judgment which may reasonably be expected from one invested with authority, and which, in our opinion, a governor so circumstanced is bound to exercise before he places the Queen's subjects committed to his government beyond the pale and protection of the laws."

This proposition, the Chief Justice said, had received the assent of the Court, in consultation with Mr. Justice Blackburn, and, indeed, this is contained in the charge. But the Chief Justice proceeded to say, that as far as he was individually concerned, there were in the charge of the learned judge, certain propositions of law from which he altogether dissented. He denied

that martial law, as we now understand it, was ever legally exercised in England against civilians not taken in arms, and expressed very grave doubt whether the martial law which the Jamaica statute authorized the governor to put in force, was anything more than a levy of the inhabitants, and their subjection, while in the military service, to military law. And, finally, he emphatically repudiated all concurrence in the opinion that the removal of Gordon to the proclaimed district was legally justifiable. "Assuredly," said he, "had I known that the law would have been laid down as it is understood to have been stated, I should have felt it my duty to attend in my place in court on the occasion of the charge being delivered, and to declare my views of the law to the jury."

Mr. Justice Blackburn then gave some explanation of the way in which the misunderstanding arose. He said that he had read carefully the charge of the Lord Chief Justice, in the case of *Regina v. Nelson and Brand*, and thought that he agreed with the opinions there expressed, so far as was necessary for the purpose of his instructions to the Grand Jury; that the main points of the charge, on which all the judges were agreed, he had reduced to writing, and read to them, and had then too briefly stated to them the other minor points of his charge. His own mind, he said, was so full of what he had been deliberating on, that he did not sufficiently explain his opinions to the other members of the court. With regard to the instructions on the evidence, however, he took the entire responsibility, and he so stated to the jury, while informing them of the agreement of his brethren on the matters of law.

The Chief Justice then reiterated his former statement that he had heard nothing from the learned judge, excepting the proposition as to the responsibility of the governor, and in this Mr. Justice Lush concurred.

BANKRUPTS ON THE BENCH.—The following, from the London *Law Times*, shows that even in England the Bench is not wholly free from bankrupts:—

"For some little time past the Judge of a metropolitan County Court has been unable to sit, having been arrested at the suit of a creditor. We do not state particulars because the scandal is sufficiently widespread already, and we here desire only to call attention to the fact that there appears to be no power of removing a County Court Judge, who, by reason of his liabilities, is an unfit person to fill the office. The grounds upon which he may be removed are "inability and misbehavior," but under neither of these headings, strictly speaking, can a Judge be brought who is simply in debt, unless he be continuously in the hands of the sheriff, when, doubtless, the term "inability" would apply. Of all persons the County Court Judge should be free from the stigma of insolvency, his principal duty being to compel the payment of debts due—a compulsion which he must exercise with a very bad grace when he himself is a more extensive sinner. In the particular instance we fear there is much cause to anticipate some inconvenience and considerable scandal."

MEASURE OF DAMAGES.

Cory *v.* The Thames Ironworks and Shipbuilding Company, Law Rep., 3 Q. B. 181.

Although the jury have always, or nearly always, to decide upon the amount of damages that a plaintiff is entitled to recover in an action, they are bound to adopt the scale or method of ascertaining such amount that is pointed out to them by the judge presiding at the trial. The rule by which the damages must be calculated is called "the measure of damages," and is a question of pure law with which the jury are not concerned. For instance, to take the simplest possible example, the measure of damages for breach of a contract to deliver goods is, in the absence of any special circumstances, the difference between the agreed and the market price at the time of the breach. The law being that

this is the true measure of damages, it is for the jury to say what is the amount of the difference between the market price and the agreed price of the goods. There may, however, be special circumstances which render this rule inapplicable, and Hadley *v.* Baxendale (2 W. R. 302, 9 Ex. 341), is the leading case on this subject. The rule there laid down is "where the parties have made a contract which one of them has broken, the damages which the other party ought to receive in respect of such breach of contract should be either such as may fairly and reasonably be considered as arising naturally, *i.e.*, according to the natural course of things, from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties at the time they made the contract as the probable result of the breach of it." This rule has frequently been acted upon, but difficulty is found from time to time in applying it to the facts of a particular case.

In Cory *v.* The Thames Ironworks and Shipbuilding Company, a question arose as to the measure of damages upon the breach of a contract for the sale of a "derrick" or large flat-bottomed vessel or float. The defendants did not deliver the derrick until six months after the stipulated time. The plaintiff purchased the derrick in order to erect on it hydraulic cranes, for the purpose of unloading coals from vessels in the Thames. This was an entirely new contrivance, as no vessel had ever been used in this way before, and the defendants were not aware of the use to which the plaintiff intended to put the derrick, but thought it was to be used as a coal store, which was the most obvious use to which it could be applied. The plaintiff, in anticipation of having the derrick at the stipulated time, procured new steamtugs and certain machinery, and in consequence of the delay of six months before the derrick was delivered, he lost a considerable sum of money from the steamtugs and the machinery being useless, or nearly so, during that time. The value of the derrick as a coalstore during the period of six months would have been about £450, much less than the plaintiff had actually lost. The question was, first, whether the plaintiff was entitled to recover only the £450, or whether he might not recover the larger amount which he had lost. The defendants also argued that as the plaintiff did not intend to use the derrick as a coalstore, he could not recover damages for not having the vessel for that purpose; that as the defendants did not know the actual use to which it was proposed to put the derrick, they were not liable for the actual damage sustained.

Cockburn, C.J., thus laid down the rule applicable to this case: "Where the buyer may have suffered a loss by reason of the non-delivery of a thing intended for some special or extraordinary purpose, the seller is not liable for that loss, unless it was brought within his contemplation at the time of the sale. But he ought to be made to pay to this extent, so far as he had in his contemplation the loss of profits which would result by its not being applied, by reason of non-delivery, to the ordinary purpose for which he supposed it to have been purchased." The plaintiff was therefore entitled to recover the £450, as he had actually suffered that loss, and as he would have suffered that loss if the derrick had been employed in the most obvious way in which it could have been used. This case, it will be seen, quite agrees with Hadley *v.* Baxendale, but in addition it explains and decides a point that apparently had not before been decided.—*Solicitors' Journal.*

THE DIGEST OF LAW COMMISSION.

The Digest of Law Commissioners have chosen for the preparation of specimen digests, Mr. Henry Dunning Macleod, on the law of bills of exchange; Mr. William Richard Fisher, on the law of mortgages, and Mr. John Leyburn Goddard on the law of easements. Mr. Macleod has been at the bar, but, we believe, without practice, nearly twenty years, and is well known as the author of a very exhaustive work on the theory and practice of banking. Mr. Fisher is an

Equity draughtsman and conveyancer. He was called to the bar in 1851, and is the author of one of the standard works on mortgages. Mr. Goddard has been scarcely six years at the bar, and is wholly unknown in the world of authorship upon the subject to which he has been appointed.

There were thirty-six competitors upon the subject of mortgages, and amongst them was a learned sergeant in company with several men well-known in authorship and in practice. Twenty-four gentlemen competed in the treatment of bills of exchange, a partner in a joint production being a Queen's Counsel of some reputation. Upon the branch easements and servitudes, twenty-seven papers were sent in, some of them emanating from gentlemen of long standing, and erudition, well known in authorship and practice.

We must remark upon the selection made by the commissioners as we remarked when competition by the whole bar was invited, namely, that it would have been better to have entrusted the work to known authors without competition. Had this course been pursued, in all probability Mr. Macleod and Mr. Fisher would have been selected. Mr. Goddard alone would have been placed at a disadvantage. He has won the prize in a competition which was severe, and to him is due every credit. We say that it would have been well to adopt this course, because it is impossible to forget what an amount of time and labor has been wasted, and expense incurred by gentlemen ill able to spare either time or money, and how great the disappointment of many.—Granted that all this must have been contemplated by the competitors; nevertheless the competitive system was a bad system to apply to such a purpose. We trust, however, that the result will be satisfactory.—*The Law Times.*

MOUSTACHES AT THE BAR.

The question of the right of barristers to wear moustaches has just been again raised in Paris. A young advocate named Ferrand, on whose upper lip might be seen a growth of hair evidently cultivated with some care, came before the Tribunal of Correctional Police, the day before yesterday, in some affair of no importance. After apologizing to the court for having caused the postponement of the case in consequence of his having been engaged before the Military Tribunal, he was about to proceed, when the judge, looking at the offending ornament on the gentleman's face, said, smiling, "Where you have just been pleading there may not have been any objection to the ornament on your upper lip, but here you must be aware it is not permitted." The barrister had, however, come prepared with his own defence, and, after protesting that he was not infringing any regulations, showed that the whole question of costume was based on a decree of 1810, which contained no prohibition, and maintained the previous ordinances on the subject. "As to the custom of the former Parliament," he continued, "it is sufficient to raise your eyes to those portraits which we admire around us to see that the faces of those judges and advocates are adorned with majestic beards." He added that the question had recently been raised with respect to the National Guard Mobile, when the minister of Justice had replied to an application to allow moustaches at the Bar, by declaring there was no need to permit it as it was not forbidden. M. Ferrand also said that he had already pleaded in the same court as he then appeared. "In that case," said the judge, "you may do so to-day, but we shall make an enquiry into the matter."—*Paris Correspondent of the Times.*

CONFESSION.

A controversy is raging whether, if the ministers of religion in a gaol receive a confession from a convict, they are bound to communicate it to the public. We cannot understand the affirmative argument. Where lies the moral obligation to divulge any secret, much less a secret revealed in the confidence that it will never pass beyond the ear that receives it? No public interest whatever is to be served by it. A confession has no other advantage than that it relieves certain restless minds from an uncomfortable feeling of doubt. A con-

fession does not strengthen the verdict, nor does nonconfession weaken it. It is desirable that a criminal should confess, not for the benefit of the public, but for his own sake, because it is the first step to repentance; but for this purpose the confession is the same, whether made to one or to many. As being a question wholly between the criminal and his God, we have no hesitation in asserting that all confessions made to ministers of religion in the performance of their duties should be privileged, like those made to an attorney. It is for the temporal advantage of the criminal that he is allowed to make a clean breast of it to his solicitor, and it is for his spiritual and eternal advantage that he should do the like to his minister, and it would be humane, right and politic to encourage him to save his soul by the assurance that he will not thereby destroy his body.—*The Law Times.*

A ROMANTIC LAW CASE.

The courts of law will in all probability be occupied early in the ensuing session with one of those remarkable cases which so often occur in romances, and so seldom in real life. It appears that about a hundred and twenty years ago a large estate, close to one of the most important of English manufacturing towns, was in the possession of the great grandfather of the parties to the present litigation. Since that time the land has been built upon to a great extent, and now forms the most wealthy suburb of the town in question. At the death of the owner, his eldest son, finding that there was no will, naturally claimed the estate. The children of a second marriage, however, who had never lived on good terms with their half-brother, protested against his title on the ground that his parents had never married, and that he was consequently illegitimate. It seemed at first that there was no ground for this statement. The parents had always been received in society, and no one had ever heard of any scandal in connection with them. On making inquiry, it was, however, found impossible to discover any trace of the marriage, and the eldest son was forced to submit, and leave the home he had always considered his own, without a shilling. He went into town and embarked in trade, apparently without much success, for his grandson is at the present time a shoemaker in a back street, and in a very small way of business. The tradition of the lost estate has, however, always been preserved, and some time since this descendant of the elder son recommenced the search for proof of the marriage in question. After much trouble he succeeded in getting at the copies of the registers which are preserved in the Chancery at Chester, and there, in the index, he discovered, somewhat easier than was expected, the names of the original possessor of the estate and his first wife. There, was, however, no such entry in the body of the book. At last, however, in going through it for the last time, it was discovered that two leaves had been fastened together, and on their being separated a copy of the entry of the marriage from the books of a Manchester church was duly found. On referring back to the church itself, the book was produced, but the entry was not there. Further examination showed, however, that this book had been tampered with, but in a different way—a leaf had been cut out with scissors, and the marks were even then distinctly visible. On these facts the action will be brought, and when it is remembered that the present family have been in possession for nearly a century, and that they are highly respected, and their members married among the wealthiest people in the county, it may readily be imagined that the matter is creating a good deal of interest. The value of the property at stake is between one and two hundred thousand pounds.—*Western Morning News* (*English.*)

LORD PLUNKET.

The son of a Presbyterian clergyman in the North of Ireland, he was left by his father's death penniless at an early age; but having, through the kindness of friends, gained an education at Trinity College,

Dublin, and afterwards an entry into Lincoln's Inn, London, he was called to the Irish bar in 1787. His studies had been pursued with unflagging zeal and industry. He had debated every inch of ground with Fearne (his favourite author) on the battle field of contingent remainders; and his success at the bar was immediate, and his rise rapid. He attended closely to his profession, and kept aloof from the allurements of political life, until 1798, when he entered the Irish Commons. It is here that are found Plunket's first reported political speeches; and though his arguments afterwards delivered in England, both to the Lords and Commons, may perhaps be more comprehensive, statesmanlike and elegant, here he exhibited a greater eloquence, a stronger and more heartfelt passion and sarcasm, than can be found in his more elaborate orations.

Nature had added to the great gifts of mind an imposing personal appearance. His features and voice added weight to his words. What had been in youth "a clever, hard-headed boy, very attentive to his studies, and very negligent of his person," had become a tall, robust and compact man. "His face," says Mr. Shiel, "is one of the most striking I ever saw; and yet the peculiarity lies so much more in the expression than in the outline, that I find it hard to describe it. The features, on the whole, are blunt and harsh. There is extraordinary breadth and capacity of forehead; and when the brows are raised in the act of thought, it becomes intersected with an infinite series of parallel lines and folds. His eloquent contemporary, Charles Philips, has thus sketched him: "Who is that square-built, solitary, ascetic-looking person, pacing to and fro, his hands crossed behind his back, so apparently absorbed in self,—the observer of all, and yet the companion of none? It is easy to designate the man, but difficult adequately to delineate his character. Perhaps never was a person less to be estimated by appearances: he is precisely the reverse of what he seems —externally cold, yet ardent in his nature; in manner repulsive, yet warm, sincere and steadfast in his friendships; severe in aspect, yet in reality sociable and companionable. That is Plunket, a man of the foremost rank, a wit, a jurist, a statesman, an orator, a logician, the Irish Gysippus, as Curran called him, in whom are concentrated all the energies and talents of the country."

It was in Chancery that his reasoning powers had their fullest effect, and it was there that his greatest practice lay, there that he obtained the largest professional income at the Irish bar. Mr. Shiel gives a graphic and amusing picture of his equity arguments: "There is one peculiarity in his powers," he says, "which, to be adequately comprehended, must be actually witnessed. I allude to his capacity of pouring out, I would almost say indefinitely, a continuous, unintermitted volume of thought and language. In this respect, I look upon Mr. Plunket's going through a long and important argument in the Court of Chancery, to be a most extraordinary exhibition of human intellect. For hours he will go on, with unwearied rapidity, arguing, defining, illustrating, separating intricate facts, laying down subtle distinctions, prostrating an objection here, pouncing upon a fallacy there; then retracing his steps, and restating, in some original point of view, his general proposition; then flying off again to the outskirts of the question, and dealing his desultory blows, with merciless reiteration, wherever an inch of ground remains to be cleared, and during the whole of this does not his vigor flag for a single instant,—his mind does not pause for a second for a topic, an idea, or an expression. This velocity of creation, arrangement and delivery, is quite astonishing; and what adds to your wonder is, that it appears to be achieved without an effort.

Unlike Erskine, Plunket increased his general reputation by his parliamentary efforts. Upon the passage of the Union, he retired from political life to the practice of his profession.

It was at this time that he was retained in the prosecution of Robert Emmett. After successively filling the positions of Solicitor

and Attorney General of Ireland, he was, in 1812, elected to the English House of Commons as the representative of Dublin. For fifteen years he continued a member of the House; and in successive parliaments, in which Grattan, Brougham, Canning, Mackintosh, Romilly and Peel, contended for pre-eminence in debate, it is admitted he had no superior as a public speaker. Comparing him with his greatest rivals, he had not the imagination of Grattan, the brilliancy of Canning, the depth of Mackintosh, or the versatility of Brougham.

In 1822, Plunket was again made Attorney General of Ireland; and in 1827, when Canning became minister, he was raised to the peerage, and nominated to the office of Master of the Rolls, in England. The latter appointment was cancelled, on account of the objection of the English bar to the intrusion of an Irishman; and he was given the Chief Justiceship of the Common Pleas in Ireland. This he held but a short time, and in 1830 he was made Chancellor of Ireland. He held the seals, with the exception of a few months, until 1841, when he was removed, through a political intrigue, for the purpose of giving the Chancellor's retiring pension to Lord Campbell. "It was," says Lord Brougham, "the most gross and unjustifiable act ever done by party, combining violence and ingratitude with fraud." At the period of retirement, though at the advanced age of seventy-five years, he was in perfect possession of his powers. After a brief tour on the continent, he retired to his country seat at old Connaught, where he lived, surrounded by his family, until his death, in 1854, in his ninetieth year. It is related that the old man, in his last years, dead to the present, was wont to rehearse with his descendants, fresh from college, those passages of the ancients which had inspired his eloquence and formed his taste in youth; and to drive often to the hill side, whence he could view the dome of the Four Courts, the arena of his professional victories. In that arena is now placed a marble statue of him, with the inscription on its pedestal, "Erected by the Bar of Ireland."—*Am. Law Review.*

THE NEW JUDGES.

The three new judges authorized by the Election Petitions Act have been selected. They are Sir W. B. Brett, the Solicitor General; Mr. Sergeant Hayes, and Mr. Cleasby, Q.C. Sir W. B. Brett was called to the bar at the Inner Temple in January, 1846. He was made a Queen's Counsel in 1861, and Solicitor-General in 1868. He represents in Parliament the borough of Helston.

Mr. Sergeant Hayes was called to the bar at the Middle Temple in January, 1830. He was raised to the degree of the coif in 1856, and received the patent of precedence. He has long been a leader of the Midland Circuit. He had the reputation of being the wittiest man at the bar.

Mr. Cleasby was called to the bar at the Inner Temple in 1831. He was made Queen's Counsel in 1861. He has enjoyed an extensive practice in the Northern Circuit, and last year was an unsuccessful candidate for the University of Cambridge, having been defeated by Mr. Beresford Hope. Although appointed under the provisions of the Corrupt Practices Act of last session, the new judges will not of necessity be "the bribery judges." To this unpleasant and somewhat degrading duty one judge of each court is to be condemned by the vote of his brethren. It is reported that Sir W. B. Brett has been preferred to the Common Pleas, Mr. Sergeant Hayes to the Queen's Bench, and Mr. Cleasby to the Exchequer. All the new judges are said to be Conservatives. Some criticism is expressed by the newspapers on these new appointments, for the reason that the Conservative government, having already had an unparalleled amount of legal patronage at its disposal, has not seen fit to fling a few crumbs to its political opponents. A more serious defect in the English system seems to be, that almost every judicial office is filled, no matter which party may be in power, by lawyers who are also politicians. A seat in Parliament is nearly indispensable to legal preferment.—*Am. Law Review.*

THE LAW OF LIBEL.

The Court of Exchequer has just determined a new and curious question: Is a judge liable to an action for slander for words used on the judgment seat? One of the county court judges had told a defendant on a trial before him that he was "a harpy preying on the vitals of the poor." For this the action was brought, to which the judge pleaded the privilege of his office. It was contended for the plaintiff that a judge is not wholly protected in respect of anything he may say in his capacity as a judge, and that at least the privilege does not extend to anything spoken falsely and maliciously. The judgment of the Lord Chief Baron, in which the other Barons concurred, was as follows:

It certainly raised, and perhaps for the first time, a question in relation to the judge of a county court of considerable importance, and it was for that reason, and that reason only, speaking for himself, that he thought it right to hear the entire argument on behalf of the defendant, and not at once at the outset to call upon the plaintiff's counsel to support the declaration or replication. The question was, whether an action was maintainable against a judge of a county court, which was a court of record, for words spoken by him in his judicial character, and in the exercise of his judicial functions, in a court within and over which he presided, although they might impute to the plaintiff that which, as against an ordinary individual, would constitute a cause of action, and although it would be alleged, as in the declaration, that they were spoken maliciously, without probable cause, and wilfully, that they were irrelevant to the matter in issue, and in fact spoken under all the circumstances of aggravation which it might be the object of some ingenious special pleader to devise or to invent. He said that in the largest terms, because he thought that they were bound to decide this question, so as if possible to preclude any doubt hereafter as to what the law really was upon this all important point. Now, it had been held from the time of Lord Coke to the present day, that no action could be maintained against a judge for any act done or any words spoken in his judicial capacity in a court of justice, and the whole current of decisions from that time to this, a space of 300 years, or nearly so, was uniformly to the same effect. It had been held, not only in the case of the superior courts of Westminster Hall, but in the case of a coroner's court, and in that of a court-martial, which was not a court of record, and was not, therefore, invested with all the privileges of such a court, but which was yet a court in which it was essential, as it was in all courts, that the judge or judges who were appointed to administer the law should be permitted, under the protection of the law, to administer it not only independently and freely, not only without favor, but without fear; and that provision of the law, which was as ancient as the law itself in this country, was not for the protection or in anywise for the benefit of a malicious or corrupt judge, or a judge of any court whatever. It was for the benefit of the whole people of the country, who were entitled to require that the judges should have perfect liberty, and should be protected by the law in the exercise of their functions for the advantage of the community. What judge could independently and freely, and without fear of the consequences, exercise his important functions, if he were in daily and hourly fear of an action being brought against him, and of its being left to a jury to say whether what fell from him in commenting on a question of fact, or delivering his judgment, was relevant to the matter in hand? It was impossible to hold too strongly, or in language too clear and expressive, that no such action as this, under any circumstances, could be maintained against a county court judge. The other judges being of the same opinion, judgment was given for the defendant.—*The Law Times.*

COPYRIGHT LAW.

The decision of the House of Lords in the case of Routledge v. Low will give an enormous advantage to American authors. In effect, it determines that a foreigner may acquire a copyright in England merely by being a resident in any part of the British dominions at the time of the first publication of his book; even though that residence be temporary, and the publication here is followed on the very next day by publication in his own country. If, therefore, as the law is now declared, an American author desires to obtain a copyright in England, he has but to cross the boundary into Canada for a couple of days, with half a dozen copies of his yet unissued book in his carpet bag, and then offer it for sale, and he acquires to himself the benefit of a British copyright, which means a revenue levied upon two generations of English readers.

In this judgment all would heartily rejoice if only the Americans would do to us as we have done to them. But they steadily refuse to be just to us in this particular. They keep what they have and get all they can. They plunder English authors without mercy; they refuse to us the slightest shadow of a copyright, no matter what we concede to them. Every good English book is pirated instantly on its appearance here, and they are deaf alike to remonstrances and reproaches. The transaction is profitable to them—that is their conclusive argument. Some of our American-worshipping journals pretend to a belief that our example will shame the Americans into doing as they have been done by, and that they will consent to forego their dishonest gains for the future. But it is far more probable that our concession will serve to confirm their practice. We had some little rein upon them while we held in our hands the means of retaliation, but we have thrown it away, and now we have none. We are dealing with a people who pride themselves upon their "'cuteness" in driving a bargain. A bargain means an exchange. They might have been brought to consider whether it would not be profitable to "swap" with us a copyright law at home for copyright in England; but now that we have flung to them our copyright without demanding theirs in return, they will assuredly pocket it with a grin, and when we ask for reciprocity will laugh at us—as we shall, indeed, deserve to be laughed at.—*The Law Times.*

HOPKINSON *v.* MARQUIS OF EXETER.

Club — Expulsion of Member by General Meeting—Bonâ fide Exercise of Power to remove.

The plaintiff asked for a declaration that he was entitled to the enjoyment of the property and effects of a club, the rules of which authorized the committee to call a general meeting "in case any circumstance should occur likely to endanger the welfare and good order of the club," and provided that any member might be removed by the votes of two-thirds of the persons present at such meeting. On a bill filed by a member so removed praying to be reinstated in his rights as a member of the club, *Held*, that, as in the judgment of the Court the meeting was fairly called and the decision arrived at *bonâ fide* and not through caprice, such decision was final, and that the Court had no jurisdiction to interfere.

This was a suit against the committee of the *Conservative Club*, of which the plaintiff was one of the original members, and from which he had been expelled by the vote of a general meeting, praying a declaration that so long as he should conform to the rules of the club (which he offered to do) he was entitled to participate in the use and enjoyment of the property and effects of the club, and in its rights, privileges and benefits, and also that the defendants might be restrained from excluding the plaintiff from such rights and benefits, and from removing his name from the list of members.

The rules of the club made no reference to the political opinions of its members, except so far as they were implied by the

name. The 29th rule provided that it was "the duty of the committee, in case any circumstance should occur likely to endanger the welfare and good order of the club, to call a general meeting, and in the event of its being voted at that meeting by two-thirds of the persons present that the name of any member should be removed, he should cease to belong to the club."

At the time of the election in 1865 a correspondence took place between the plaintiff and the secretary of the club respecting a pledge which it was alleged the plaintiff had given to vote for certain "Liberal" candidates at the election of 1865, the result of which was that the committee convened a general meeting under the 29th rule to consider such correspondence, and whether the plaintiff's name should be removed from the club.

The meeting was held, and the chairman referred to certain votes given by the plaintiff for "Liberal" candidates, and the correspondence was read, after which the plaintiff addressed the meeting, and expressed his wish that one of his letters to which exception had been taken were unwritten, and repudiated the right of the committee to remove him.

A resolution that the plaintiff should cease to be a member of the club was put to the vote and carried by 191 to 21.

The plaintiff submitted that he had not been guilty of any conduct endangering the welfare and good order of the club; that the meeting was unauthorized; that the real issue put to the meeting was as to the votes he had given, which it was not competent to the meeting to consider.

The defendants, by their answer, submitted that the meeting was properly convened; that the proceedings in question were not dictated by personal or political pique; and that the plaintiff was not entitled to the relief prayed.

Sir *Roundell Palmer*, Q.C., Mr. *Wickens*, and Mr. *Osborne Morgan*, for the Plaintiff:—

A club being a species of partnership, the rules which regulate ordinary partnerships may, to a certain extent, be applied to it, though with some qualification, as it is an institution *sui generis*, being mainly intended for social purposes. All the members of a club are bound by the contract into which they enter as defined by the rules. In the present instance there is a power by this contract under certain circumstances to remove a person from being a member of the club, but this power must be exercised *bonâ fide* and for the purpose for which it was introduced into the contract. The way in which similar powers are to be exercised in ordinary partnerships was considered in *Dummer* v. *Corporation of Chippenham* (1), and in *Blisset* v. *Daniel* (2), where it was held that a power which was given to two-thirds of the holders of shares in a partnership to expel any partner could not be exercised without any cause being assigned, but must be exercised with good faith and not against the tenor of the contract. In the case of *In re St. James's Club* (3), it was considered that though clubs were not partnerships within the meaning of the Winding-up Acts, yet that a member of a club had an interest in the general assets, and that if the club were broken up while he was a member he might file a bill to have its assets administered, and would be entitled to have a share in its effects. In the present case we contend that the power of removal was improperly exercised; that the real issue put to the meeting related to the Plaintiff's votes at the recent election, which did not contravene any of the rules of the club, and formed no ground for his expulsion; that this Court has, in such a case, full power to interfere, as in the case of an ordinary partnership, to protect the Plaintiff's rights and privileges as a member of the club; and that, there being nothing in his conduct to warrant the step which has been taken, he is entitled to a decree.

The *Solicitor General* (Sir *C. J. Selwyn*), Mr. *Baggallay*, Q.C., and Mr. *Walford*, for the Defendants:—

A club is an association of gentlemen in which the rules of good order and good

(1) 14 Ves. 245.
(2) 10 Hare, 493.
(3) 2 D. M. & G. 383.

feeling ought to be maintained, and for this purpose the power of expelling an obnoxious member is vested in a certain majority of its members. We admit that this power cannot be exercised corruptly or capriciously, but if that is not proved to have been the case, the Court cannot interfere with the discretion of the members. The only question, therefore, is, whether they have acted *bonâ fide* for the good of the club. In *Inderwick* v. *Snell* (1), where a general meeting of a company was empowered by the deed of settlement to remove any director for negligence, misconduct in office, or any other reasonable cause, and certain directors were removed for alleged misconduct, and new directors appointed,—on a bill filed by the directors who had been removed to set aside the proceedings of the meeting, it was held that the words "reasonable cause" referred only to such a cause as should be deemed reasonable by the shareholders, and that, in the absence of fraud, the Court had no jurisdiction to interfere. That decision has been followed in the case of *Manby* v. *Gresham Life Assurance Society* (2). Here the Court has no right to interfere with the honest exercise of the discretion of the members. The circumstances of the case, and the Plaintiff's conduct, were sufficient to justify the calling of the meeting, and, with regard to the Plaintiff's votes at the election, if the majority held that those votes were contrary to the well being of the club, even if that were the reason of the decision, it would afford no ground for the interference of the Court.

Mr. *Wickens*, in reply.

LORD ROMILLY, M.R.:—

I should have reserved my judgment in this case if I thought that by so doing I could have arrived at any different conclusion from that to which I was led very early in the argument.

This is an application by the Plaintiff asking a declaration that he is entitled to the enjoyment of the property and effects of the *Conservative Club*, and to participate in its rights, privileges, and benefits, and also that the Defendants, the committee of the club, may be restrained by injunction from excluding him therefrom, or removing his name from the list of members of the club.

These clubs are very peculiar institutions. They are societies of gentlemen who meet principally for social purposes, superadded to which there are often other purposes, sometimes of a literary nature, sometimes to promote political objects, as in the *Conservative* or the *Reform Club*. But the principal objects for which they are designed are social, the others are only secondary. It is, therefore, necessary that there should be a good understanding between all the members, and that nothing should occur that is likely to disturb the good feeling that ought to subsist between them.

It follows that a club is a partnership of a perfectly different kind from any other. In order to secure the principal object of the club, the members generally enter into a written contract in the form of rules, and in the rules of this club it is provided (Rule 29), that, "it shall be the duty of the committee, in case any circumstances should occur likely to endanger the welfare and good order of the club" (that is, likely in their opinion to do so), "to call a general meeting, and in the event of its being voted at that meeting by two-thirds of the persons present, to be decided by ballot, that the name of any member shall be removed from the club, then he shall cease to belong to the club." That rule amounts to this, that if such circumstances as are there referred to should arise, it would be the duty of the committee to call a meeting, and to submit the matter for a judicial decision of the members of the club at that meeting, and then it would be for them to determine whether any "circumstances likely to endanger the welfare and good order of the club" had taken place.

The evidence shows that this has occurred in the present case. The committee were of opinion that circumstances had occurred likely to endanger the welfare and good order of the club; they called a general meeting of the club. The matter was sub-

(1) 2 Mac. & G. 216. (2) 29 Beav. 429.

mitted for the judicial decision of the members of the club, and they decided by the votes of two-thirds of the members present, such votes being taken by ballot, that the Plaintiff should thenceforward cease to be a member of the club.

The first question is, whether there is any appeal from that decision. It is clear that every member has contracted to abide by that rule which gives an absolute discretion to two-thirds of the members present to expel any member. Such discretion, like that referred to by Lord *Eldon* in *White* v. *Damon* (1), must not be a capricious or arbitrary discretion. But if the decision has been arrived at *bonâ fide*, without any caprice or improper motive, then it is a judicial opinion from which there is no appeal. None but the members of the club can know the little details which are essential to the social well-being of such a society of gentlemen, and it must be a very strong case that would induce this Court to interfere.

In the present case I have felt reluctant to go into any questions that have arisen further than to ascertain that the decision of the meeting was a *bonâ fide* exercise of their discretion, and not the result of mere caprice. I forbear, therefore, to comment on the conduct or the letters of the Plaintiff, but I am of opinion that this was a *bonâ fide* meeting, and one that was fairly called; that the question was fairly submitted to the meeting, and the decision adopted *bonâ fide*, and not through any caprice; and, therefore, that the decision was final, and the bill must be dismissed with costs.—*Law Rep.* 5 *Eq.* 63.

Judicial Bombast.—A number of decisions of the Supreme Court of Nevada have reached us. One short extract will suffice to show that in the study of their profession the bar and the bench of Nevada have not neglected the graces of classical culture:—"As every means which legal learning and subtle ingenuity could suggest have been long since exhausted in this cause, counsel have now, it seems, been driven to the necessity of calling the muses from the sylvan shades of Pindus and Helicon to assist them; and, if we may judge from the tragic fervor of the respective arguments, Melpomene at least responded to their invocation; for we find the evidences of her assistance on both sides of this irrepressible case. But, unfortunately for counsel, the law does not affiliate with the tuneful nine, nor accept them as authority in her prosy dominion, but, like the companions of Ulysses, stops her ears against their seductive appeals, and listens only to logic and unvarnished facts. As faithful servants of this wrinkled-browed and heartless prude, the law, we will leave the poetry of the case, and direct attention to what little prose there may be left in it."—*Am. Law Review.*

(1) 7 Ves. 35.

Capital Punishment.—In the debate in the English House of Commons, on the 21st of April, on the measure for making executions private, Mr. Gilpin having questioned the expediency of capital punishment, Mr. Mill said, to deprive a criminal of the life of which he had proved himself unworthy—solemnly to blot him out from the fellowship of mankind, and from the category of the living—was the most appropriate and the most impressive mode in which society could deal with so great a crime as murder. Imprisonment would be far more cruel and less efficacious. None could say that this punishment had failed, for none could say who had been deterred, and how many would not have been murderers but for the awful idea of the gallows. Do not bring about an enervation, an effeminacy in the mind of the nation; for it is that to be more shocked by taking a man's life than by taking all that makes life valuable. Is death the greatest of all earthly evils? A manly education teaches us the contrary; if an evil at all, it is one not high in the list of evils. Respect the capacity of suffering, not of merely existing. It is not human life only, not human life as such, but

human feelings, that should be held sacred. Moreover, taking life for murder no more implies want of respect for life than fining a criminal shows want of respect for property. In countries where execution is morbidly disliked, there is no abhorrence of the assassin. Mr. Mill added that we had been in danger of reducing all our punishments to nothing; and though that disposition had stopped, our penalties for brutal crimes (for which he earnestly recommended the scourge) were ridiculously light, and ought to be strengthened. The House, on division, by 127 to 23, affirmed the principle of Capital Punishment.

ERMINE WITHOUT SILK.—A contemporary, in a leader relative to the new Judge, Mr. Justice Hannen, observes, "He never took silk." We should think not. There is no occasion for anybody to say, "Set a Judge to try shoplifters."—*Punch.*

For his mastery of oratorical artifice Alexander Wedderburn was greatly indebted to Sheridan, the lecturer on elocution, and Macklin, the actor, from both of whom he took lessons; and when he had dismissed his teachers and become a leader of the English bar he adhered to their rules, and daily practised before a looking-glass the facial tricks by which Macklin taught him to simulate surprise or anger, indignation or triumph. Erskine was a perfect master of dramatic effect, and much of his richly deserved success was due to the theatrical artifices with which he played on the passions of juries. At the conclusion of a long oration he was accustomed to feign utter physical prostration, so that the twelve gentlemen in the box, in their sympathy for his sufferings and their admiration for his devotion to the interests of his client, might be impelled by generous emotion to return a favorable verdict. Thus when he defended Hardy, hoarseness and fatigue so overpowered him towards the close of his speech, that during the last ten minutes he could not speak above a whisper, and in order that his whispers might be audible to the jury, the exhausted advocate advanced two steps nearer to their box, and then extended his pale face to their eager eyes. The effect of the artifice on the excited jury is said to have been great and enduring, although they were speedily enlightened as to the real nature of his apparent distress. No sooner had the advocate received the first plaudits of his theatre on the determination of his harangue, than the multitude outside the court, taking up the acclamations which were heard within the building, expressed their feelings with such deafening clamor, and with so many signs of riotous intention, that Erskine was entreated to leave the court and soothe the passions of the mob with a few words of exhortation. In compliance with this suggestion he left the court, and forthwith addressed the dense out-door assembly in clear, ringing tones that were audible in Ludgate Hill, at one end of the Old Bailey, and to the billowy sea of human heads that surged around St. Sepulchre's Church at the other extremity of the dismal thoroughfare.—*Jeaffreson.*

Of Egerton's student days a story is extant, which has merits, independent of its truth or want of truth. The hostess of a Smithfield tavern had received a sum of money from three graziers, in trust for them, and on engagement to restore it to them on their joint demand. Soon after this transfer, one of the co-depositors, fraudulently representing himself to be acting as the agent of the other two, induced the old lady to give him possession of the whole of the money—and thereupon absconded. Forthwith the other two depositors brought an action against the landlady, and were on the point of gaining a decision in their favor, when young Egerton, who had been taking notes of the trial, rose as *amicus curiæ*, and argued, "This money, by the contract, was to be returned to *three*, but *two* only sue—where is the *third?* let him appear with the others; till then the money cannot be demanded from her." Nonsuit for the plaintiffs—for the young student a hum of commendation.—*Jeaffreson.*

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POSTCRIPT.

Since the October number appeared, it has been deemed advisable to discontinue the issue of the *Law Journal*. The series is therefore brought to a close by the present volume.

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